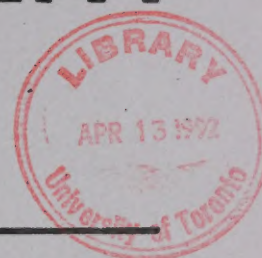


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ENVIRONMENTAL ASSESSMENT BOARD



VOLUME: 364

DATE: Monday, March 30, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

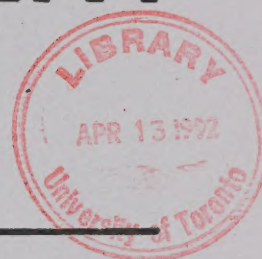
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ENVIRONMENTAL ASSESSMENT BOARD



VOLUME: 364

DATE: Monday, March 30, 1992

BEFORE:

A. KOVEN Chairman


E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416) 963-1249

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.

Hearing held at the offices of the Ontario
Highway Transport Board, Britannica Building,
151 Bloor Street West, 10th Floor, Toronto,
Ontario, on Monday, March 30th, 1992,
commencing at 10:30 a.m.

VOLUME 364

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

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MR. D. O'LEARY		
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MR. M. BAEDER)	and WINDIGO TRIBAL COUNCIL
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. D. COLBORNE)	GRAND COUNCIL TREATY #3
MR. G. KAKEWAY)	
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MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
2155	OMAA Panel No. 5 Witness Statement.	63317
2156	Resumes for Messr. Aiken, Dolcetti and King.	63322
2157	One-page letter dated March 13, 1992 from Mr. Patrick Reid, Ontario Mining Association to Mr. Irwin (OMAA).	63363
2158	Land use activity map for the Eastern Lake Nipigon Community.	63371
2159	One-page list of people in attendance at working seminar held in Sault Ste. Marie, October 17, 1991.	63410
2160	Agenda of a conference held on October 21st and 22nd, 1991, entitled: Canada/U.S. Conference on Aboriginal Justice Systems in Sault Ste. Marie, Ontario.	63421
2161	13-page document entitled the: Chippewa Ottawa Treaty Fishery concerning the Sault Ste. Marie tribe of Chippewa Indians, the Grand Traverse Band of Chippewa and Ottawa Indians and the Bay Mills Indian Community.	63424
2162	Hand-drawn map depicting boundaries of the Chippewa Ottawa Treaty Fishery Management Agreement.	63445
2163	Letter from Ross Edmonstone, general manager, Ontario Federation of Snowmobile Clubs.	63450

1 ---Upon commencing at 10:30 a.m.

2 MADAM CHAIR: Good morning. Please be
3 seated.

4 MR. IRWIN: Good morning.

5 MADAM CHAIR: Good morning, Mr. Irwin.

6 So, Mr. Irwin, we're here today to hear
7 the evidence of your -- well, we're calling them panels
8 4 and 5, we'll see how you present your evidence and
9 you might want to -- as far as we understand we're
10 going to start with what was panel 4.

11 MR. IRWIN: Right.

12 MADAM CHAIR: And you will be calling Mr.
13 Hector King to testify to that evidence?

14 MR. IRWIN: No. He will be on -- the
15 first group is Mr. Aiken and Mr. Dolcetti, and Mr. King
16 is here, Mr. King will be on the third panel with the
17 MacGuire brothers, Patrick MacGuire, Sonny MacGuire and
18 Mike MacGuire and Mr. Simmons.

19 The second panel was to consist of Mr.
20 Elliott and Mr. Nothing. Mr. Nothing is now with the
21 NAM, no longer with OMAA, so the second panel will
22 consist only of Mr. Elliott.

23 MADAM CHAIR: All right. And so what
24 you're telling us is that your witnesses will be
25 testifying to some combination of the evidence in both

1 these panels?

2 MR. IRWIN: Yes. I thought I would go
3 through a bit of an overview as to how we see
4 proceeding through the evidence because there's been
5 such a time lag between the last time we were here and
6 today.

7 MADAM CHAIR: All right. Any objections
8 from the parties for Mr. Irwin to begin with a
9 description of how he will proceed.

10 (no response)

11 Go ahead, Mr. Irwin.

12 MR. IRWIN: Thank you, Mrs. Koven.

13 First, because as I say it's been quite a
14 while, I would like to tell you what OMAA is. OMAA is
15 a non-profit organization with around 200,000 members,
16 about 63 affiliate locals in five zones across Ontario,
17 and the ELNC is defined in our -- East Lake Nipigon
18 Community is defined in our material as a group of all
19 natives within the meaning of the Constitution of
20 Canada residing within the Eastern Lake Nipigon area
21 set out in witness statement No. 5, and we have that on
22 the wall to your left. That will be described by Mr.
23 Dolcetti. It's also the last insert in witness
24 statement No. 5.

25 To date we've had three panels of

1 evidence, if I can briefly summarize them. First, we
2 gave expert testimony on quantitative analysis and
3 aboriginal issues; secondly, expert testimony on
4 historical developments from the Manitoba Act of 1870
5 to the inclusion of the words aboriginal rights and
6 Metis in Canada's Constitution; thirdly, expert
7 evidence on the evaluation of the steri decisis within
8 the judicial system, primarily from Professor Brad
9 Morse in Thunder Bay; and, fourthly, evidence by Metis
10 and aboriginal people within the ELNC on the
11 traditional hunting, harvesting, trapping and fishing
12 rights by these people since time immemorial.

13 Now, what is contained in witness No. 5,
14 witness statement No. 5. The area in question is 3,378
15 square miles and, as I indicated, is mapped out in the
16 back of the submission. There are three major centres
17 within the ELNC, Macdiarmid, Beardmore and Jellicoe.
18 Now, an overview of the composition of these
19 communities is set out in the demographics and land use
20 activities commencing at page 6 and there are only two
21 Native bands within the area, fairly small ones, the
22 Rocky Bay Band and the Sand Point Band, and within the
23 area many identifiable groups such as two
24 municipalities and the Metis organization and the
25 outfitters.

1 Now, the EAB heard evidence at Thunder
2 Bay defining, as I said, traditional use and we are not
3 going to revisit that except in a cursory way on the
4 third panel.

5 In the preface of our presentation OMAA
6 draws the Board's attention to the memorandum of
7 understanding dated April 29th, 1991 which is included
8 in its entirety later in the submission. This MOU was
9 signed by OMAA, the Province of Ontario, the federal
10 government and is to run for three years.

11 Within that time one of the objects of
12 the MOU is, to quote:

13 "Increase control, authority,
14 responsibility and accountability for the
15 economic development and promotion of
16 aboriginal peoples economic
17 self-sufficiency".

18 Mr. Wildman on June 19th wrote to Mr.
19 Bjornaa - and that's there too, his letter - and stated
20 in part:

21 "Ontario is willing to restart self
22 government discussions with OMAA."
23 OMAA takes these agreements and these
24 commitments very seriously.

25 And the model that you see commencing at

1 page 29 of our submission has been sent directly to Mr.
2 Wildman and OMAA has stated that it's prepared to enter
3 into an agreement at some time.

4 MADAM CHAIR: Excuse me, Mr. Irwin. The
5 document you are referring to, witness statement No. 5,
6 let's give it an exhibit number. This will become
7 Exhibit 2155.

8 MR. IRWIN: 2155.

9 MADAM CHAIR: And this is witness
10 statement No. 5, Eastern Lake Nipigon Community Native
11 Self-Government in the Timber Management Sector,
12 Co-Management System for Natural Resources filed on
13 behalf of the Ontario Metis and Aboriginal Association.

14 MR. IRWIN: Thank you, Mrs. Koven.

15 ---EXHIBIT NO. 2155: OMAA Panel No. 5 Witness
16 Statement.

17 MR. IRWIN: The MOU is at page 10 of the
18 exhibit, it will be dealt with in some detail by our
19 panel of witnesses, primarily by Mr. Aiken as to
20 substance and primarily by Mr. Dolcetti of Proctor
21 Redfern as to demographics.

22 Page 11 has a small map of the area and
23 page 13 gives the objects of the MOU which are in broad
24 terms; namely, timber management plans, conservation of
25 wildlife management, fishing, trapping, hunting and

1 harvesting, land use, enforcement, environmental
2 protection and subsurface mineral rights.

3 Mr. Aiken will probably proceed through
4 the evidence at page 13. This describes the joint
5 council which OMAA invisions as having members
6 appointed and elected, 50 per cent by the ELNC and 50
7 per cent by Ontario with the chairman to be neutral.

8 Page 14 gives a list of those things that
9 the council may study and make recommendations ranging
10 from methods of harvesting, spraying, traditional use.

11 And starting at page 15 deals with some
12 detail with some specific powers. OMAA will leave the
13 details to the witness but points out that page 15
14 carries OMAA's timber management proposals and its
15 conservation and wildlife management proposals.

16 Page 16 has its land use recommendations.
17 Page 17 has its environmental protection, subsurface
18 mineral rights proposals.

19 OMAA would add under the subsurface
20 mineral rights that there is a proposal for fees,
21 royalties and other compensation be paid to the ELNC
22 for mining or oil extraction.

23 Pages 18 to 25 contain a commentary on
24 other agreements such as Dome Exploration, St. Joe
25 Canada Inc., the Sechelt agreement, James Bay Northern

1 Quebec agreement, and the Chippewa Ottawa agreement,
2 and Mr. Aiken will be giving evidence to these also
3 abroad to other countries off-shore and on this
4 continent as to what they're doing.

5 As far as enforcement, OMAA has looked at
6 the Chippewa Ottawa advancements in the fishery
7 management as a model and here we'll be calling Mr.
8 Elliott, a Chippewa residing in the State of Michigan.

9 The rules and regulations were only
10 adopted in May, 1987 after I believe two years of
11 negotiating between the various agencies on the
12 Michigan side and are included to the rear of our
13 presentation.

14 Now, that system provides for tribal
15 courts, tribal prosecutors, tribal wardens, tribal
16 monitoring and independent scientific analysis by the
17 tribe members and tribe employees.

18 At page 25 of the model agreement OMAA
19 gives examples of just what is being developed;
20 namely - this is on the Chippewa model - the dates of
21 allowable seasons, bag limits, restrictions on gear,
22 Tribal state wardens presence at landings to enforce
23 the monitor of codes, regulations that stipulated that
24 each fisherman must bring his or her catch to a
25 monitoring station, the closing of certain portions of

1 lakes is very important.

2 Now, they are in the process now - and
3 you'll hear evidence from Mr. Elliott - of taking that
4 model and applying it to land-based activities, these
5 are water-based activities, such as fowl, deer, wild
6 rice, trapping, fishing and small game.

7 OMAA has provided a chapter on Working
8 Together and the ELNC know that non-Native people in
9 the area have a significant stake in the area.

10 The ELNC have tried to talk openly and
11 franky with the outfitters, the chiefs and the reeves
12 and in a way these discussions on the whole have been
13 fairly positive, a lot of questions, and I'll leave
14 that evidence to panel No. 5.

15 I would only add in conclusion that the
16 one letter submitted by Frances Koning, as I want to
17 start -- I want to note our evidence, where he is the
18 Jellicoe Business and Tourist Association
19 representative and says that this proposal, which I
20 have before you, has merit and deserves our support,
21 speaking to the support of the outfitters.

22 With that, unless Madam Chairman you
23 have questions, I'll open our case with our first
24 witness.

25 MADAM CHAIR: All right. Why don't we

1 get started, Mr. Irwin.

2 MR. IRWIN: Thank you.

3 MADAM CHAIR: And does Mr. Aiken wish to
4 be sworn in or affirmed?

5 MR. AIKEN: Your pleasure.

6 MADAM CHAIR: We ask people to approach
7 us and be sworn.

8 MR. FREIDIN: And Mr. Dolcetti as well.

9 MADAM CHAIR: Mr. Dolcetti will also be
10 giving evidence?

11 MR. DOLCETTI: Yes.

12 MADAM CHAIR: Could you approach us, sir.

13 HERBERT JOHN AIKEN, Sworn

14 MADAM CHAIR: Thank you, gentlemen.
15 Excuse me, Mr. Irwin. Do you also want to give an
16 exhibit number to the resumes that you sent to the
17 Board--

18 MR. IRWIN: Okay.

19 MADAM CHAIR: --for your witnesses. We
20 will make this Exhibit 2156. .

21 MR. IRWIN: That would be Mr. Aiken's
22 resume.

23 MADAM CHAIR: I have two documents both
24 dated March 23rd, 1992, one contains the CV of Mr.
25 Arthur Elliott and the other contains that of Mr. Aiken

1 and Mr. Dolcetti.

2 MR. IRWIN: I take it that I sent in
3 three.

4 MADAM CHAIR: And I have brief resumes
5 for Mr. Harold Michon, Mr. Patrick MacGuire, Mr.
6 Michael MacGuire and Mr. Joseph Simmons -- or Mr.
7 Stanley Simmons and Mr. Hector King.

8 MR. IRWIN: That's correct.

9 ---Discussion off the record

10 MR. IRWIN: Shall I enter Mr. Aiken's
11 resume as 2156, Mr. Dolcetti's as 2157?

12 MADAM CHAIR: We could put all the
13 resumes under one exhibit number, Mr. Irwin.

14 MR. IRWIN: Under one. All right.

15 MADAM CHAIR: That will be Exhibit 2156.

16 ---EXHIBIT NO. 2156: Resumes for Messrs. Aiken,
17 Dolcetti and King.

18 DIRECT EXAMINATION BY MR. IRWIN:

19 Q. And, Mr. Aiken, the Board has your
20 resume and I would like to go over some of the points
21 in it that are relevant to this hearing.

22 I notice that you served from 1942 to
23 1945 as a navigator for the Royal Canadian Air Force;
24 is that correct?

25 A. That's correct.

1 Q. And I'll jump to '62 when you went to
2 the Ontario Department of Transport as a senior claims
3 supervisor; is that correct?

4 A. That's correct.

5 Q. And '64 to '67 you were the Director
6 of Motor Vehicle Claims Fund?

7 A. Yes.

8 Q. '67 to '73 you were the Director of
9 the Motor Vehicle Branch, Ontario Department of
10 Transport?

11 A. That is correct.

12 Q. And from 1973 to '76 you were the
13 Executive Director, Regional Operations, Department of
14 Transport.

15 And '76 to '77 the Executive Director,
16 Transportation Regulations, Deputy Registrar of Motor
17 Vehicles.

18 And 1977 you were the Acting Assistant
19 Deputy Minister Driving and Vehicle Branch, Ontario
20 Registrar Motor Vehicles.

21 And from 1977 you moved over to Northern
22 Affairs when you became the Assistant Deputy Minister
23 of Northern Region, Ministry of Northern Affairs?

24 A. Yes.

25 Q. In 1986 Assistant Deputy Minister of

1 Northern Transportation, Ministry of Northern
2 Development and Mines. And in 1988 Assistant Deputy
3 Minister of Special Projects, Ministry of Northern
4 Development and Mines.

5 Was there a period just before your
6 retirement you were the acting Deputy Minister?

7 A. That was earlier on during, oh, about
8 '80 I would think.

9 Q. And in 1989 you retired and in
10 retirement you were involved with the Sault Ste. Marie
11 Economic Development Corporation; is that correct?

12 A. Yes, I'm on the Board of Directors.

13 Q. And you are involved with BRIDGE.
14 What's BRIDGE?

15 A. That's a tortured acronym which
16 stands for Bi-Regional Incentive for the Development of
17 Greater Education.

18 What in fact it represents is a joint
19 effort by the three post secondary institutions in
20 Sault Ste. Marie, Ontario and Sault Ste. Marie,
21 Michigan in search of ways in which, by combining their
22 assets into joint enterprises, they can do rather more
23 than they can acting as individual institutions.

24 They are complementary programs which in
25 combination could provide courses at the degree level

1 which would not otherwise be available. It also trades
2 on the presence of perhaps one of the finest
3 collections of forestry scientists in North America in
4 the Ontario Forest Research Institute and in the two
5 Departments of Forestry Canada.

6 Q. While you were at Northern Affairs
7 you were involved in several interministry committees
8 and working groups that covered highways, health,
9 agriculture, training, development, education, tourism,
10 culture, municipal affairs, transportation, industry
11 and trade; is that correct?

12 A. Yes.

13 Q. And while you were at the Department
14 of Transport you were involved in the re-organization
15 related to computerization of vehicle records?

16 A. Yes. It was a transfer from a manual
17 file to a computerized file.

18 Q. Can you give us some examples of
19 specific projects which you have been involved in that
20 might be apropos this hearing?

21 A. Yes. I think I would begin with
22 perhaps the construction of remote airstrips into those
23 communities without all-weather access.

24 The construction of and funding provision
25 for nurses' residences, assistance for hospital

1 expansion or construction.

2 A demonstration project at Sioux Lookout
3 that ran for two years in which we brought in Native
4 students whose intention it was to go to Thunder Bay to
5 Conn College or Lakehead and the project was intended
6 to try and find some way of bridging the transition
7 from a remote community to busy downtown Thunder Bay,
8 people who perhaps had never cashed a cheque at a bank
9 as you and I might, and were also concerned about the
10 separation from families.

11 So when the Air Force -- at least the
12 Army and the Air Force pulled out of Thunder Bay we
13 were able to use some of their property and we brought
14 in families. It ran for two years. The purpose was to
15 examine the drop-out rate before and after.
16 Unfortunately while we learned a number of things from
17 it, it did not have the impact on the drop-out rates
18 that we had hoped, but it was still a worthwhile
19 project.

20 Q. The study area that this Board is
21 reviewing, are you familiar with it?

22 A. Yes. I've been fortunate enough
23 over -- well, I began travelling in northern Ontario on
24 business in the early 50s and I guess it's fair to say
25 that I've travelled from Kenora to Mattawa and from

1 Manitoulin Island to Winisk and Severn, all of the
2 James Bay communities by helicopter, by float plane, by
3 charter aircraft, by scheduled aircraft, by snowmobile,
4 boat and motor and on foot. So that I've seen most of
5 it.

6 Q. By the way, tick my memory, did you
7 have anything to do with the Snowmobile Act?

8 A. Yes.

9 Q. How was that?

10 A. I and a young lawyer who is now in
11 the family court were seized of that opportunity
12 because the snowmobiles suddenly became a problem, they
13 were everywhere, and so we were asked to draft
14 legislation that might control them, and neither one of
15 us had ever seen a snowmobile but that didn't
16 discourage us, we sat down with the Highway Traffic Act
17 and asked a simple question: How would you control a
18 machine that goes everywhere, anywhere, and it wasn't
19 bad, wasn't bad, it stood up. It was revised
20 subsequently but it introduced some level of control
21 that was essential.

22 Q. Are you familiar with the Treaty
23 areas, the various bands general lay throughout this
24 area?

25 A. Generally, yes.

1 Q. In what way?

2 A. We have had some exposure with
3 respect to the northern Ontario rural development
4 agreement. I was the co-Chairman along with a federal
5 representative and there was funding within that
6 \$18.5-million for Native enterprise, so there was some
7 involvement, there was some involvement there.

8 And, similarly, there was some funding
9 from time to time through the Ministry of Northern
10 Affairs, now Northern Development and Mines.

11 Q. Would you have occasion at Northern
12 Development to travel these various communities?

13 A. The travel I speak of was essentially
14 business travel, the odd fishing trip and the odd --

15 Q. Oh, no, no, no, I'm not saying you
16 were vacationing. I mean, I'm trying to find out just
17 what Northern Development does or did do.

18 A. Winisk for example when it was
19 destroyed by flood, that took me to Winisk, it was also
20 a jumping off spot for communities in northwestern
21 Ontario, you could overnight there and then go into the
22 smaller communities from there.

23 Q. Okay. Now, you were asked by me to
24 prepare a model; is that correct, a model of
25 co-management self-government in the Eastern Lake

1 Nipigon Community?

2 A. That is correct.

3 Q. Now, I'm interested in how you
4 mentally built up the direction that you eventually
5 went, what did you study, what did you look at, and why
6 did you go in the particular direction that you did go?

7 A. Well, beginning with the challenge of
8 the phrase self-government and looking at that from the
9 point of view of a people who essentially are living
10 off the land as food gatherers, hunters, fishermen, the
11 question then became reasonably apparent: What could
12 be produced that would identify and respect the
13 interests of such people and what would the mechanics
14 of the device that would do that.

15 So starting with that as a declared or
16 recognized need, we moved on from there.

17 Q. What did you move to, what did you
18 look at?

19 A. Everything that we could get our
20 hands on that related to this. I would go through the
21 history quickly. The James Bay Northern Quebec
22 agreements No. 1, 2 and 3, and the Dene-Metis
23 Comprehensive Land Claim Agreement, the
24 Temagami-anishnabi MOU, the MNR and New Brunswick
25 Memorandum of Understanding, the papers and legislation

1 with respect to aboriginal self-government in New
2 Zealand, the Cree Miskapi, the James Bay Northern
3 Quebec Sechelt, we looked at aboriginal self-government
4 arrangements as we found them in the U.S., Australia,
5 New Zealand, Scandinavian, looked at Chippewa Ottawa
6 Treaty Fishery management which will come forward
7 later.

8 Q. Alberta.

9 A. It seems to me I've left something
10 out somewhere.

11 Q. Anything in Alberta?

12 A. No. It was a fairly comprehensive
13 package, as you would appreciate.

14 Q. I don't want to go into what was
15 discussed, but did you meet with any senior official of
16 any lobbying groups, of any groups within government,
17 any negotiators, and who were they?

18 A. A number of discussions mainly by
19 telephone, Mr. Jacobsen for one.

20 Q. Is that Peter Jacobsen?

21 A. Yes. Bart Fielders who has
22 responsibilities for Temagami.

23 Q. I believe he's the chief senior
24 negotiator of Temagami.

25 A. Ministry of Natural Resources, yes.

1 The staff -- several of the staff within the Ontario
2 Native Affairs Secretariat, discussions with
3 representatives of NOTOA and the Ontario Federation of
4 Anglers & Hunters, again by telephone.

5 Oh, visit with Mr. Pat Reid of the
6 Ontario Mining Association, and a telephone discussion
7 with Joe Bird.

8 Q. Who?

9 A. Mr. Ian Bird of the Ontario Lumber
10 Producers, I believe it's called, Manufacturers
11 Association.

12 MADAM CHAIR: That's Mr. Bird of the
13 Ontario Forest Industries Association.

14 THE WITNESS: Thank you.

15 MR. IRWIN: Q. Okay. I know that what
16 you said isn't all inclusive, but I want to lay some
17 groundwork that you did do your homework, you looked at
18 this thing globally and internally and eventually got
19 to doing what we call a memorandum of understanding
20 but, in fact, is more a list of what should be -- that
21 you think should be implemented into a co-management
22 self-government scheme for this particular area.

23 If I might turn to that at page 10. Now,
24 you state a purpose there, start off with the purpose.
25 In your own words, what was your purpose?

1 A. Recognizing the importance of the
2 land and all that grows, runs, walks or swims to the
3 people of the Eastern Lake Nipigon Community it was .
4 almost an automatic response when you ask: Why would
5 we do this, what's the importance of this, and the
6 answer of course was: To develop an integrated system
7 would have application to that land use area.

8 Q. Now, if I may lead you a bit,
9 yesterday you said that you knew the what but you
10 wanted to look at the who and how.

11 A. That's correct.

12 Q. Can you amplify on that?

13 A. Yes. It's all very well to have --
14 first of all, determine the problem and then to
15 indicate what kind of correction -- corrective actions
16 should be taken, but it becomes tremendously important
17 from the point of view of the Native people when you
18 ask the question: Who shall do this, who shall have
19 the responsibility, as you break this into elements,
20 and it then -- having done that, it established almost
21 the route that the work would take as you started from
22 that point and moved forward.

23 Q. You made certain assumptions. The
24 first is an assumption that we're dealing with the
25 land, second the meaning of co-management.

1 A. Yes.

2 Q. Third, you deal with self-sufficiency
3 and, fourth, you deal with non-aboriginal occupiers.

4 A. Correct.

5 Q. Do you want to expand on your
6 assumptions.

7 A. The first is, as you will see on page
8 10, the stewardship of the land should form the
9 fundamental basis of co-existence. The people of the
10 community must be involved in a meaningful way and to
11 the degree that they can act as stewards and not just
12 bystanders, where there is a system of some sort that
13 is imposed from elsewhere, and that's a fundamental
14 element of the memorandum of understanding and the
15 material that was produced subsequently.

16 And then as you turn to co-management, it
17 seemed to us that it could be defined as you find it
18 there:

19 "Equal partners in a joint venture of
20 common purpose, committed to common
21 principles with a sharing of power/
22 authority, responsibility/
23 accountability."

24 Something that those requirements, those
25 responsibilities falls equally to all members of the

1 partnership, neither more nor less, they stand as
2 equals.

3 And then the goal was to increase the
4 authority, responsibility and accountability for
5 economic development promotion of aboriginal peoples'
6 economic self-sufficiency. These people live on the
7 land, off the land, the land must be productive, the
8 land must be guarded in a responsible way, and that
9 seemed again a reasonable assumption if this was to be
10 meaningful.

11 Finally, there was concern for others,
12 and that's the last bullet point, that is the rights of
13 the non-aboriginal occupiers or owners of land within
14 the defined land base. It would be addressed as well.

15 Q. These would be the outfitters, the
16 township peoples and the non-natives?

17 A. Yeah, anything you can think of.
18 Should there be mines or cottagers, people with camps,
19 should all stand as a concern to be addressed.

20 Q. On page 11 you have six what you call
21 major elements:

- 22 "- limitations to and allocations of
23 annual harvest
24 - criteria for regulation of annual
25 harvest

- 1 - methods of traditionnal user
- 2 participation
- 3 - research proposals
- 4 - management of resource (e.g. sustained
- 5 yield, reforestation)
- 6 - enforcement"

7 How did you develop these so-called major
8 elements?

9 A. Well, some of them were really
10 self-evident as you begin to look at the land base and
11 the people who are resident there.

12 It was Berger who said in his most recent
13 book, A Long and Terrible Shadow, the indigenous people
14 are entitled to their culture, to their beliefs and to
15 a land base. And having said that, then the question
16 is: How shall it be -- how could it be managed, what
17 would a memorandum of understanding look like. And
18 these seemed to be self-evident truths as you looked at
19 the people, their history, their culture and the land.

20 Q. Now, I note here that social programs
21 are basically excluded and I see that they were
22 included, at least in one of the other models that I
23 saw. Is there any reason?

24 A. We had a plateful without attempting
25 to deal with that, but it must be dealt with at some

1 point. But, no, we didn't include that.

2 Q. Then there's map of the study area.

3 Now, when you came on that study area had already been
4 developed; is that correct?

5 A. Yes, that's right.

6 Q. And you're familiar with the area?

7 A. Yes, I am.

8 Q. You have been to various parts of it.

9 A. (nodding affirmatively)

10 Q. Now --

11 A. As an aside, I would say I'm very
12 familiar with it. I once had the responsibility of
13 issuing permits for overweight oversized vehicles and
14 one of the lumber companies decided to a move a
15 Scottish-built tug from Orient Bay to Lake Superior and
16 I issued the permit for it.

17 It got onto the CPR tracks and the
18 tires - of which there must have been 200 on this
19 thing - began popping like popcorn. The trains were
20 backed up in two directions for two days. I thought my
21 budding career as a bureaucrat was all over, however, I
22 surveyed it.

23 Q. At page 12 you start dealing with the
24 activities, responsibilities under any memorandum - the
25 words are mine - any memorandum of understanding.

1 "In partnership with the Government of
2 Ontario to study and make recommendations
3 in respect to the stewardship of the
4 land and its resources and to enter into
5 agreement(s) in respect of: Timber
6 management plans, conservation and
7 wildlife management, land use,
8 enforcement, environmental protection,
9 subsurface mineral rights."

10 This is, I presume, a caveat to your
11 opening remarks a minute ago?

12 A. Attempt to capture the --

13 Q. So then you get into the nuts and
14 bolts of it and the first is the establishment of a
15 joint council for ELNC traditional land use. In it you
16 speak of the development and management of natural
17 resources shall be the responsibility of a joint
18 council with 50 per cent of its members appointed or
19 elected by the ELNC and 50 per cent appointed by the
20 province with an impartial chairman who should be
21 neutral, chosen by both of them.

22 Why this model?

23 A. Having looked at the examples that
24 were referred to a little earlier it became -- after
25 study, it became apparent that something that was being

1 developed here in Ontario and in the Ministry of
2 Natural Resources appeared to have more promise.
3 Addressed more appropriately the concerns and provide
4 the kind of protection for those people who would be
5 affected by the memorandum of understanding, and that
6 was the Temagami Nishnawbe Aski agreement which is --
7 I'm not aware that it has been signed as yet, it may
8 still be undergoing further changes, but it simply
9 jumped off the page as being highly desirable and one
10 that addressed most of the concerns.

11 Now, it's been tinkered with a bit, as
12 you would appreciate in order to bring it within this
13 framework, but in principle it was -- it provided a
14 great deal of guidance in developing what you have
15 before you this morning.

16 Q. So you would think that the Temagami
17 agreement is much Superior to the James Bay or the Dene
18 agreements or the Sechelt agreements?

19 A. Yes.

20 Q. And then move from Temagami to what
21 you're proposing here?

22 A. (nodding affirmatively)

23 Q. Okay. On page 14, you say the Joint
24 Council may make recommendations to Ontario on
25 limitations to and allocations of the annual harvest,

1 method of harvest, spraying, burns, traditional user
2 participation, enforcement, data, monitoring, resource
3 management including predator management.

4 How did you develop that list?

5 A. This again is a compendium, or at
6 least it's a collection rather of those elements that
7 appeared to be essential to the interests of the
8 parties to the agreement and the parties affected by
9 the agreement.

10 Doing it again I would have added an (h)
11 which would have been other, in that I'm not sure that
12 it is totally complete, but it goes a long way toward
13 addressing those activities which are of concern.

14 Q. And after indicating in the fourth:

15 "The Joint Council shall have a mandate
16 to study the habitat, conduct information
17 programs, hold public hearings and
18 produce annual reports...", you then go

19 on in 5 to deal with the funding.

20 Now, you say in five:

21 "Programs recommended by the Joint
22 Council agreed to by Ontario shall be
23 paid for by Ontario."

24 A. Yes.

25 Q. Why did you reach that conclusion?

1 A. It will be essential from time to
2 time to do research as it appears in 6, contracts for
3 biological research in respect to fish and game stock
4 enhancements, quotas, other research into natural
5 resource. And since the Council itself has no revenue
6 from any source, and since these are interests not only
7 of the people in the area but of the province in the
8 larger sense, it seemed appropriate that Ontario should
9 be the source of the funding for that activity, as they
10 are now only it flows through a different set of pipes.

11 Q. Now, on 15 you start timber
12 management plans and you recommend that:

13 "Crown management units plans shall be
14 submitted to the Joint Council for
15 approval. In the absence of agreement by
16 the parties, i.e. MNR and the Joint
17 Council, the plan shall be referred to
18 the Minister of Natural Resources for
19 a resolution."

20 You further recommend:

21 "In the matter of timber management, the
22 Joint Council shall have jurisdiction in
23 respect of such timber management unit
24 plans and Crown management unit plans."

25 And finally:

1 "No timber licenses shall be issued
2 without the approval of the Joint
3 Council."

4 This takes a significant step in light of
5 what MNR is used to now.

6 A. Yes.

7 Q. Why did you take these
8 recommendations?

9 A. In order -- well, it was our
10 considered view that the process that depends on public
11 participation has not served us well in the past and it
12 is unlikely to serve us any better in the future, that
13 some more regulated process was appropriate and that is
14 found in the joint council where there is opportunities
15 for public meetings, public dialogue, but there is also
16 responsibility that rests not with the MNR alone but
17 with the council.

18 Dictate, change, to accept that which is
19 acceptable, and then permit the industry to continue
20 with its -- if it's the timber industry or lumber
21 industry, to know where they stand and to get on with
22 their particular work.

23 It simply, in our view, was an effective
24 way of dealing with issues, disposing of issues,
25 finding the appropriate solutions and doing -- and not

1 turning away from the need for public participation,
2 here is a decision-making body that goes -- that is
3 outside of Ministry of Natural Resources.

4 In the case of recommendation one, the
5 event of tie-breakers and in the event of a tie there's
6 a tie-breaker in the Office of the Minister.

7 Q. Why would you say it hasn't served
8 us -- this methodology hasn't served us well in the
9 past?

10 A. I would offer this august body has
11 the answer to that question, that's why we're here.

12 Q. The necessity of this body.

13 A. I think that's why we're here, that
14 it is not a perfect system.

15 Q. Conservation and wildlife management,
16 your next heading, involves fishing, trapping, hunting
17 and harvesting, you make seven recommendations the
18 first being:

19 "The Joint Council may make bylaws
20 regarding fishing, hunting, trapping and
21 the allocation of quotas on designated
22 lands, subject to an appeal process to be
23 developed."

24 Secondly:

25 "Once a bylaw comes into force it

1 supersedes provincial laws on the same
2 subject within the designated lands."

3 You may be hearing more from Mr. Elliott
4 on this type of modeling which is an effective issue
5 right now.

6 Thirdly:

7 "Non-residents may be permitted to hunt
8 or fish on the designated lands under the
9 authority of a day permit issued
10 by the ELNC under the authority of the
11 Joint Council. The parties agree to
12 exempt registered guests of licensed
13 tourist outfitters from payment of the
14 day permit fee. Non-resident fishing and
15 hunting licenses will continue to be
16 required."

17 Fourthly:

18 "The ELNC, on designated lands shall have
19 exclusive rights to hunt, fish, trap and
20 harvest food."

21 Fifthly:

22 "Non-natives may be allowed to occupy
23 lands under leases approved by the Joint
24 Council."

25 Sixthly:

1 "An income stabilization fund shall be
2 established, funded by Ontario and
3 administered by the ELNC to encourage and
4 support trapping by aboriginal people."

5 Seventh:

6 "Ontario shall provide funding to enable
7 the ELNC to negotiate the purchase of
8 trapping rights from non-aboriginal
9 licensees."

10 First off, dealing out of order with 3, 3
11 is a bit hackneyed, the exemption of tourist outfitters
12 from day permit fees. How did that come about?

13 A. As a result of meeting with the local
14 members of NOTOA who were tourist outfitters and
15 essentially caters to fishermen and hunters and they
16 were troubled at the addition of an extra fee over and
17 above those fees that they had already paid in respect
18 of licenses plus their per diems, per diem costs of
19 staying in the lodges. So that change came about as a
20 result of dialogue with those people.

21 Q. 7, the purchase of trapping rights
22 from non-aboriginal licensees. How did that one come
23 about?

24 A. Over time in the ELNC lands there are
25 a number of licenses that are held by non-aboriginals

1 and they -- from time to time they are offered for sale
2 and those who would most benefit from the acquisition
3 of such a licence are often not in a position to make
4 the purchase, and so that it was deemed appropriate to
5 provide some assistance so that they could compensate a
6 person who is surrendering the licence.

7 MR. MARTEL: I want to ask you, how did
8 you get agreement with respect to Item 4 in that part
9 of northwestern Ontario, because you involved the
10 Anglers & Hunters you indicated earlier, you dialogued
11 with the commercial operators in the area, and to get
12 agreement to that sort of exclusivity in that part of
13 the world is a bit unusual; isn't it?

14 THE WITNESS: Our cause was just. I
15 would have to say that this may not reflect, this may
16 not reflect the position of the people, position of the
17 people in Peterborough or North Bay, but it does
18 reflect the position of the people who were in the area
19 and it was not, it was not a point of great issue.

20 MR. MARTEL: But I raise it because
21 experience in Ontario has been, in northwestern
22 Ontario, and still in parts of it if one follows the
23 newspaper at all, a real bone of contention, the
24 exclusive right to hunt and fish by Native people.
25 It's never been welcomed in that part of the world and

1 I don't know when it's changed, let's say, west of
2 Thunder Bay at least.

3 THE WITNESS: I would be unable to speak
4 about the rest of northwestern Ontario, but I agree
5 with you.

6 MR. MARTEL: But you've heard it. You've
7 heard it.

8 THE WITNESS: My experience is not
9 different than yours. We would remember someone called
10 Pope.

11 MR. MARTEL: Yes.

12 MADAM CHAIR: Mr. Aiken, what you're
13 saying with respect to these items is that these are
14 the terms of some agreement that your client would like
15 to see and you're not in any way saying that there's
16 agreement for these proposals outside of the ELNC.

17 THE WITNESS: Well, with respect to 4, it
18 may be a bit more than that. It reflects a lack of
19 opposition to it by the people most immediately
20 concerned, that is within the area.

21 MADAM CHAIR: Within the Lake Nipigon
22 area?

23 THE WITNESS: Whether in the cold gray
24 light of dawn they will have second thoughts, I'm not
25 sure.

1 MADAM CHAIR: But you wouldn't argue
2 today that you have -- that there has been a great deal
3 of public scrutiny or wide-spread consultation with
4 respect to these proposals.

5 THE WITNESS: No, and we have not said
6 that.

7 MR. IRWIN: We sent out 500 copies of
8 this proposal, 500 to ADMS, DMS, ministers, they're all
9 over Ontario at our expense, not at the Environmental
10 Assessment Board.

11 MADAM CHAIR: To people in government?

12 MR. MARTEL: But you sent it to the
13 tourist operators as well in the area.

14 MR. IRWIN: Tourist operators.

15 MR. MARTEL: Yes, and people in that
16 area.

17 MR. IRWIN: And this is the first -- I
18 mean, I understand what you're saying, I would have
19 thought there would be more opposition, but this is the
20 first time that this particular question, to my
21 knowledge, has been raised and Mr. Aiken will testify
22 to that.

23 We're not saying that there's not going
24 to be objection, we're saying that so far no one has
25 objected to us.

1 MR. MARTEL: But that's the surprise I
2 have, Mr. Irwin, that there has been no objection.

3 MR. IRWIN: Yeah, it surprised me too.

4 MR. MARTEL: I just raise it to see what
5 kind of --

6 THE WITNESS: With good reason.

7 MR. MARTEL: Yes.

8 THE WITNESS: But it's factual. As I
9 say, what happens in the cold gray light of dawn, I
10 have no idea, but there it is.

11 MADAM CHAIR: Well, let's get this
12 straight. You're saying that you have some sort of
13 support for these proposals, and let's just look at the
14 seven them on pages 15 to 16.

15 THE WITNESS: There was one concern, and
16 an earlier draft had required the payment of day permit
17 fees as is not uncommon on reserve lands for hunting
18 and fishing, and the group asked that that be changed,
19 and it was changed and the change is reflected here.

20 MR. MARTEL: See what's worrying me is, I
21 hear the comments, I read the comments of giving the
22 Native people just the right to a hundred moose in
23 Algonquin and the hornet's nest that that disturbed, I
24 think it's a hundred moose and 150 deer or something
25 like that, and if one reads the newspaper it's a

1 decline and the end of moose and deer in Algonquin
2 Park.

3 And I see the comments here and that's
4 not the experience that is going on in other areas
5 involving limited use, not exclusive use, and that's
6 why I just raise the question because in 4 you're
7 talking about exclusive use.

8 THE WITNESS: Yes.

9 MR. MARTEL: And it's just not what's
10 going on in other areas of the province, and I'm just
11 surprised by that.

12 THE WITNESS: I can't disagree with you.

13 MADAM CHAIR: Your evidence, Mr. Aiken,
14 is in fact that you had discussions with perhaps 10 or
15 12 people in this area and you had no other discussions
16 with what might be other interests outside these
17 discussions, although you have mailed copies of this
18 agreement.

19 THE WITNESS: No, but because this would
20 only have application on this small piece of land.

21 MADAM CHAIR: But the interests of larger
22 provincial organizations such as the Ontario Federation
23 of Anglers & Hunters and so forth...

24 THE WITNESS: There would be a major
25 reaction elsewhere I'm sure.

1 MADAM CHAIR: And so the consultation is
2 really with the handful of people who are identified in
3 this document.

4 MR. IRWIN: Well, I wouldn't say that.

5 MR. FREIDIN: Well, I would like to have
6 the witness' answer to this.

7 MADAM CHAIR: Mr. Freidin.

8 Mr. Aiken --

9 THE WITNESS: It was not intended, it was
10 not intended to reflect the attitude, the reactions,
11 responses, the position of anybody, any other group
12 except this particular small group.

13 MADAM CHAIR: Thank you.

14 THE WITNESS: Whether it would be
15 possible to beguile outside of the ELNC lands, I'm not
16 sure.

17 MR. IRWIN: Mrs. Koven, we will be
18 calling at least one witness, Mr. Aiken was not at the
19 Jellicoe meeting with the outfitters.

20 THE WITNESS: No.

21 MR. IRWIN: All of the outfitters in this
22 area were present, all of the outfitters.

23 MADAM CHAIR: Well, Mr. Irwin, I count up
24 the number of outfitters that were at the Jellicoe
25 meeting and there are six people or so.

1 MR. IRWIN: There were at least 12 at
2 that meeting in that room and I think Mr. MacGuire was
3 present at Jellicoe or Mr. Michon, and their comment
4 which is their exhibit December 31st, where they talk
5 about a draft, the original draft did not have the same
6 page number but you see the words on the second page of
7 their letter we've got:

8 "Exclusive rights...", what they asked
9 for is:

10 "...is this for all natives or just
11 those natives of the ELNC?"

12 That was their concern of the outfitters.
13 Now, provincially it's almost a Pavlovian response
14 that: No, you know, we can't have this.

15 But the comments of the outfitters who in
16 their words on December 31st not only met with the
17 group but had additional meetings, you see their last
18 paragraph:

19 "...attended the series of meetings held
20 to discuss the ELNC proposals..." we were
21 only at one, but they obviously had others amongst
22 themselves. Their only concern on that was did
23 exclusive rights mean all the natives or just those
24 natives of the ELNC.

25 That's right after the letter, right

1 after page 28, and the letter from Reeve Brennen and
2 then the letter of December 31st.

3 They have other concerns as far as
4 increasing representation, they ask for business
5 representation in tourism, mining, oddly enough they
6 don't ask for MNR representation on the ELNC. They
7 have other concerns which I thought -- which are there
8 and evident and instructive.

9 MADAM CHAIR: Mr. Irwin, we normally
10 break at 12:00 for lunch and so if that's a convenient
11 time for you, we'll go ahead. And our lunch hour is
12 usually 12:00 to 1:30.

13 MR. IRWIN: Boy, time goes when you're
14 having fun. I didn't really we had been up here an
15 hour, I thought we just started.

16 Q. Okay. How do you envisage this joint
17 council, this 50/50 council making these bylaws for
18 hunting, fishing and trapping, your first
19 recommendation?

20 A. That would be part of the agreement
21 with the province and with the people of the ELNC
22 lands, beginning initially with a memorandum of
23 understanding that would ultimately produce a Treaty of
24 co-existence, and it would then deal with the
25 establishment of the council, the role and the

1 authority that it has in such language that it would be
2 functional and able to address these issues.

3 Q. Now, your next recommendation may
4 be -- may or may not be, I don't see it's controversial
5 because it has to be workable, but it may be considered
6 controversial by some.

7 "Once a bylaw comes into force, it
8 supersedes provincial laws on the same
9 subject within the designated lands."

10 Why that wording?

11 A. Again it seems to be one of those
12 cases where the tail goes with the hide, where if the
13 ELNC people are to have responsibility in a cooperative
14 way with the provincial interests and other interests
15 that that language is then, it seems to me,
16 appropriate.

17 Q. So you might have deer conservation
18 laws, quotas in this area that could be different from
19 abutting areas?

20 A. Exactly. It would recognize the
21 local situation rather than something that would be
22 province-wide, for example, or even northern Ontario
23 versus southern Ontario. It would be specific.

24 Q. We have dealt with 4. 5 is
25 self-evident:

1 "Non-natives may be allowed to occupy
2 lands under leases approved by the Joint
3 Council."

4 MR. FREIDIN: I'm sorry, what page are
5 you looking at?

6 MR. IRWIN: The Conservation and Wildlife
7 Management, item No. -- page 16 item No. 4 and 5. We
8 have to move on to another next section.

9 Q. Now, item 6 on page 16 you talk about
10 an income stabilization fund for trapping and
11 aboriginal people. How do you envision this fund
12 working?

13 A. Oh, when a trap line was being
14 relinquished by --

15 Q. Not 7, the income stabilization fund?

16 A. Oh, sorry.

17 Q. 6.

18 MADAM CHAIR: What page are you on, Mr.
19 Irwin?

20 MR. IRWIN: I'm still on that same
21 section.

22 MADAM CHAIR: You went back.

23 MR. IRWIN: Page 16, item No. 6.

24 THE WITNESS: Sorry. There is, at least
25 in respect to the people of the ELNC community there

1 are trappers who find that despite their hard work that
2 it's a less than marginal existence and yet trapping is
3 important both culturally and from the point of local
4 industry.

5 And so it's thought that Ontario, it
6 would not be inappropriate if they were to subsidize
7 those full-time trappers who found that by reason of
8 the season or whatever the external influences may be,
9 it was not possible to make a living. And so this
10 would establish a minimum income for a full-time
11 trapper.

12 MR. IRWIN: Q. You then deal with land
13 use on page 16 and 17 and make five recommendations.
14 The first:

15 "Designated lands cannot be sold or
16 otherwise alienated without the consent
17 of the ELNC."

18 Secondly:

19 "Portions of the designated lands may be
20 sold by the ELNC with the approval of
21 Ontario. The ELNC may attach conditions
22 to any sale and thus control the use of
23 such lands."

24 Thirdly:

25 "The ELNC may control access to the

1 designated lands but shall not deny
2 access to holders of timber or mineral
3 rights or to Federal or Provincial
4 Servants.

5 4. The ELNC shall have aboriginal title
6 to the designated lands and nothing in
7 this Agreement shall be so construed as
8 to affect in any way the aboriginal,
9 treaty, constitutional or other rights,
10 privileges or freedoms of the members of
11 ELNC, regardless of whether such rights,
12 privileges and freedoms are recognized,
13 established and defined before or after
14 the execution of any Memorandum of
15 Understanding.

16 The ELNC may make bylaws regarding
17 access to and residence on the lands,
18 zoning and land use such as expropriation
19 for community purposes, the use and
20 construction of buildings and roads,
21 water supply, fire protection, garbage
22 collection, sewage, street or area
23 lighting, recreation, taxation for local
24 purposes, ie. property taxes."

25 How were these five recommendations

1 developed?

2 A. Again, by attempting to identify what
3 would be needed, what would be essential to
4 implementation and management of the community lands.

5 In some cases it was again possible to
6 refer to legislation that is in place and is working.
7 If I were to take you to No. 5, there is a model in
8 Ontario, it is called the Local Services Board Act,
9 it's been in place since the late 70s or was revised in
10 '80.

11 Q. Did you develop this Act?

12 A. Yes, with some assistance from a
13 group that were known as UCNO, the unincorporated
14 communities of northern Ontario, and there was a very
15 fierce young lady from Herkitt who late one night in
16 the Airways Hotel, we managed to get the right amount
17 of words on the right piece of paper that could go back
18 and then became the Local Services Board Act.

19 It provides the means by which the
20 unorganized community can deal with matters such as
21 water supply, fire protection, garbage collection,
22 sewage, street or area lighting, recreation.

23 It's a reasonably informal process, but
24 it recognizes the capacities and needs of the
25 unincorporated communities, particularly -- the

1 unorganized communities rather.

2 Q. Was that Act in play for a couple of
3 decades?

4 A. I should think 14 years.

5 Q. Is it working more or less?

6 A. To the best of my knowledge.

7 Q. Did you draw from any other sources
8 other than the two you've mentioned? Common sense
9 and --

10 A. Yeah, there might -- I'm just
11 wondering whether there was one in the Temagami. No,
12 that would be it.

13 Q. All right. The next category is
14 Environmental Protection, you make one recommendation:
15 "ELNC may also make bylaws for the
16 protection of the environment of
17 designated lands subject to approval of
18 the Minister."
19 That would be the Minister of Natural
20 Resources?

21 A. Yes.

22 Q. "(eg. prevention of pollution)."
23 Why this fairly summary wording?

24 A. That's a bit of a jungle and it was,
25 at this point, intended to simply make note of the need

1 for some protection, some device that would have
2 application to the designated lands to be developed
3 further in the agreement.

4 Q. This agreement is only -- it's an
5 interim measure in a sense, it's a five-year agreement
6 with monitoring after four years that you're
7 suggesting. Even during this period you're suggesting
8 on environmental issues that the Minister have a veto
9 power under the agreement. The bylaws would be
10 developed by the council subject to veto power by the
11 Minister.

12 A. And it would probably involve both
13 the Minister of Natural Resources and the Minister of
14 the Environment in the finalization of a product.

15 Q. The subsurface mineral rights.
16 Perhaps this is a misnomer. I believe Mr. Reid brought
17 to your attention that there are surface mineral
18 rights.

19 A. Yes.

20 Q. But subsurface and surface mineral
21 rights, you make three recommendations.

22 "The ELNC may demand fees, royalties or
23 other compensation for allowing mining or
24 oil extractions.

25 2. In the matter of mineral

1 developments, the ELNC shall be entitled
2 to benefits that are not less than those
3 described in such agreements as the Dona
4 Lake agreement or the Golden Patricia
5 agreement.

6 The ELNC may refuse to surrender any
7 sub-surface oil or mineral rights or
8 alternatively may surrender such rights
9 but attach conditions to such surrender."
10 How did you develop that?

11 MADAM CHAIR: Excuse me, Mr. Aiken. Mr.
12 Irwin, this is one of the few areas where I think I can
13 safely say this hearing has very little interest in
14 mineral rights, so we can I think skip over that very
15 quickly.

16 But we would be interested in hearing Mr.
17 Aiken's views on the various agreements that had to do
18 with essentially mineral developments, but presumably
19 have some applicability to timber management and the
20 kind of agreements that Native communities have
21 undertaken with the industry.

22 THE WITNESS: Sure. Well, put very
23 simply, in order to permit these mining developments to
24 go ahead without delay or other interruption, there
25 were negotiations that involved the various tribal

1 councils and various bands and so on.

2 And in a single sentence, in return for
3 approval the companies agreed to provide training to
4 Native people who could work above ground or below
5 ground or in other activities; they undertook to
6 provide employment as well as training; and, thirdly,
7 they provided business opportunities for the Native
8 people in the area.

9 And that in itself was a rather large
10 step forward because in many of these enterprises there
11 had been little or no opportunity for Native people
12 heretofore, and so this was -- and it's worked very
13 well.

14 MADAM CHAIR: I thought in your written
15 evidence you were critical of those agreements, on page
16 20.

17 THE WITNESS: Oh yes, that's the last
18 paragraph, and I think that's accurate. The
19 enforceability of the -- I've written:

20 "...the enforceability of the contracts
21 are somewhat illusive. The terms of
22 these agreements are very vague and open
23 to wide interpretation. Resolution
24 of the difficulties under the agreement
25 are probably achieved through litigation

1 or consultation."

2 That is a caution, not disapproval
3 because to the best of my knowledge the companies
4 involved did a reasonable job of adhering to them, but
5 had there been a problem, then I think these comments
6 would apply, would have application.

7 It was also intended to be a caution in
8 the event that there are more of the same, to look a
9 little more carefully at the language.

10 MR. IRWIN: Before I leave subsurface
11 rights, I received a letter from Mr. Reid. I think
12 it's fair to say he doesn't like the subsurface section
13 and he sums up his observations by saying that:

14 "I think a lot of people see the resource
15 industry as a cash cow that everybody can
16 milk."

17 And if I may file that on his behalf, if
18 that would be fair, and I've given copies to my
19 friends. (handed)

20 He's not a man to mince his words.

21 THE WITNESS: He said that somewhat more
22 explicitly in conversation, as I recall.

23 MR. IRWIN: As a matter of fact, he's
24 toned down in this letter what he said verbally.

25 MADAM CHAIR: All right. This will

1 become Exhibit 2157 and it is letter to Mr. Irwin from
2 Patrick Reid, the president of the Ontario Mining
3 Association, one-page letter, dated March 13th, 1992.

4 ---EXHIBIT NO. 2157: One-page letter dated March 13,
5 1992 from Mr. Patrick Reid,
6 Ontario Mining Association to Mr.
Irwin (OMAA).

7 THE WITNESS: Just in passing, we had not
8 received responses or comments from others who had
9 received copies such as NOTOA or the Ontario Federation
10 of Anglers & Hunters. Whether we could assume that
11 that was tacit approval or not, I'm not sure.

12 MR. MARTEL: I wouldn't count on it.

13 MR. IRWIN We're not holding our breath.

14 THE WITNESS: Okay.

15 MR. IRWIN: On page 20 you deal with
16 enforcement, you say:

- 17 "1. ELNC may passing bylaws limiting
18 access to the designated lands. Such
19 bylaws must be approved by Ontario
20 during the five-year time frame.
- 21 2. The ELNC shall have sufficient powers
22 to pass by-laws relating to land use
23 planning, hunting, fishing and trapping.
- 24 3. Under authority assigned to the ELNC,
25 native enforcement officers shall be

1 employed to enforce game and fish laws on
2 the designated lands in respect of Native
3 offenses."

4 4. A conservation court shall be
5 established which shall have jurisdiction
6 in respect to Native offenses on the ELNC
7 lands."

8 Perhaps for clarity sake, Mr. Elliott
9 will amplify on this in his evidence. We anticipated
10 that Natives being charged would be coming before a
11 Native court, and non-natives would have the option of
12 coming before a Native court or a non-native court.

13 Q. Do you have any comment on that or
14 would you prefer to defer to Mr. Elliott on that?

15 A. I think that would be best.

16 Q. And that comes to the end of the MOU.
17 I'll defer to you at this point, if there's any other
18 observations you wish to make in this sum question.

19 A. This I believe to have been for me an
20 interesting opportunity and a meaningful opportunity to
21 understand and recognize the ambitions of a community,
22 the ELNC community, and then by simply stepping back
23 and saying:

24 What is appropriate, what is required,
25 what is essential that can benefit jointly the

1 interests of the community as well as the larger world
2 outside it, and the end result of that reflection and
3 review, as I said earlier, above everything that could
4 be found that was on topic, was the input to the
5 agreement as you have it before you today.

6 And it's not quite written in pencil, but
7 there will be opportunities for revisions and
8 modifications to meet some other needs that may have
9 been overlooked, underestimated or misunderstood.

10 But I am content that I think that the
11 basic document is one that holds much promise.

12 MR. IRWIN: Okay. Thank you, Mr. Aiken.
13 Thank you, Mrs. Koven, Mr. Martel.

14 MADAM CHAIR: Mr. Irwin, was it the
15 intention that we would cross-examine each of your
16 witnesses as they finish their evidence, or do you want
17 to lead the evidence of several of them before we do
18 that?

19 MR. IRWIN: I'm in the hands of the Board
20 and the counsel. The second witness on this panel is
21 land use demographics.

22 We could have the other witness and both
23 cross-examined at the same time, but substantively it
24 might be more appropriate while it's still fresh to
25 examine Mr. Aiken on the model put forward.

1 MADAM CHAIR: All right. Let's ask the
2 counsel what they want to do. Mr. Freidin?

3 MR. FREIDIN: Well, Madam Chair, we have
4 lots of experience keeping things fresh in our mind. I
5 recommend that we follow the usual procedure and Mr.
6 Dolcetti gives his evidence.

7 There may be some interrelationships, we
8 can deal with those at that time, otherwise we might
9 have a problem if there are because we can't
10 cross-examine both.

11 MADAM CHAIR: All right.

12 And, Mr. Irwin, do you intend to call
13 eight witnesses altogether.

14 MR. IRWIN: Seven witnesses.

15 MADAM CHAIR: You will be calling seven
16 witnesses.

17 MR. IRWIN: Mr. Nothing won't be present.

18 MADAM CHAIR: All right. I think it
19 might be more expeditious if we did hear Mr. Dolcetti's
20 evidence and then cross-examined both witnesses at the
21 same time.

22 MR. IRWIN: Perhaps I will have time to
23 do his resume and that might be the appropriate time
24 for the break.

25 JERRY DOLCETTI, Sworn

1 DIRECT EXAMINATION BY MR. IRWIN:

2 Q. Mr. Dolcetti, you are a senior
3 planner with Proctor and Redfern; is that correct?

4 A. That is correct, in Sault Ste. Marie.

5 Q. And how wide a geographic area is
6 encompassed in --

7 A. Okay. In terms of my
8 responsibilities with Proctor and Redfern, which I
9 started about a couple of years ago, my area of
10 jurisdiction covers Kenora right through to about
11 Elliot Lake in terms of dealing with planning issues,
12 in terms of growth of communities, and I also do offer
13 project management as part of specific projects,
14 developing marinas and that like.

15 Q. And I see that you have a number of
16 professional affiliations in your resume. Canadian
17 Institute of Planners, Ontario Professional Planning
18 Institute, American Planning Association.

19 A. That's correct.

20 Q. And prior to going to Proctor and
21 Redfern in 1990, you were with the City of Sault Ste.
22 Marie as a principal planner from 1972 to 1989; is that
23 correct?

24 A. That's correct.

25 Q. What was your responsibility there?

1 A. In terms of working with the City of
2 Sault Ste. Marie, or for the City of Sault Ste. Marie,
3 I was responsible to oversee and plan developments for
4 the community dealing with policy as well as specific
5 land uses on a city-wide basis, as well as brought to a
6 very minute neighbourhood level, and that development
7 would see everything from commercial, industrial,
8 residential development, transportation and the like.

9 Also, as part of the responsibility that
10 I had when I started was to oversee the development of
11 unorganized areas north of the City of Sault Ste. Marie
12 to the Montreal River.

13 At the time when I was brought on board,
14 there were no controls from a planning perspective and
15 the City of Sault Ste. Marie was retained to have --
16 or, let's say, to assist in the overall development of
17 areas north of the City to the Montreal River. They're
18 currently under the process now of trying to become
19 organize and it's been a very long and difficult
20 process.

21 Q. I believe you've had some marina
22 experience, some fish hatchery experience?

23 A. Yes. As part of my other involvement
24 in terms of project management and development for the
25 City of Sault Ste. Marie, we got involved in trying to

1 diversify the opportunities for the residents of Sault
2 Ste. Marie as well as try to secure a better future.

3 Some of the ideas we came up with was
4 certainly in the strengths of the City to bring forth
5 opportunities. Marinas, since we are fronting on St.
6 Mary's River and we do have very active fishing in
7 terms of sports fishing in the area, we said: Well,
8 what do we really have in terms of strengths.

9 So we developed our marinas, we developed
10 a fish hatchery. In fact, the fish hatchery is one of
11 the first municipally owned fisher hatchery.

12 It basically is run by the Ministry of
13 Natural Resources and they were very instrumental in
14 helping us with the facility and providing expertise in
15 developing that process.

16 This is one of the few in North America
17 where they use waste industrial heat to increase the
18 growth of fingerlings?

19 A. Yes. The facility itself is close to
20 an industry. There are settling basins that are being
21 used by Algoma Steel and there is heat that than can be
22 realized from these settling basins.

23 The average heat that can be received is
24 approximately six to eight degrees, it assists in
25 overall keeping the energy efficiency of the facility.

1 Q. Now, you represent some rural urban
2 townships too, you've done work for them?

3 A. Yes, I have, outside of the City of
4 the Sault Ste. Marie.

5 Q. You've worked for citizens groups as
6 well as for townships outside the City of Sault Ste.
7 Marie?

8 A. Yes.

9 Q. You've given evidence I suppose for
10 the townships, for the City and for citizens groups and
11 before the Ontario Municipal Board?

12 A. Yes, I have, as well as the Ministry
13 of the Environment on hearings.

14 Q. Okay. Now, you were retained by OMAA
15 to look at the ELNC area?

16 A. That's correct.

17 Q. And there's a map beside Mr. Martel.
18 Did you develop that map?

19 A. Yes. Did you want me to get up?

20 Q. Yes, it might be better. I'll bring
21 the mike over.

22 A. I can perhaps raise my voice. Can
23 everyone hear me.

24 MADAM CHAIR: Excuse me. Are you going
25 to be leaving that map with us, Mr. Dolcetti?

1 THE WITNESS: I would like to.

2 MADAM CHAIR: All right. Let's give it
3 an exhibit number then. This map will be Exhibit 2158.
4 And could you give us the name of the map, Mr.
5 Dolcetti?

6 THE WITNESS: Really it's a land use
7 activity map for the Eastern Lake Nipigon Community
8 and, the boundaries, as Mr. Irwin has indicated
9 earlier, were part of the process prior to us becoming
10 involved.

11 ---EXHIBIT NO. 2158: Land use activity map for the
12 Eastern Lake Nipigon Community.

13 THE WITNESS: Okay. In terms of the land
14 use activity, we were given the boundaries that
15 apparently were of importance to the community; in
16 other words, there were some relevance to the
17 boundaries historically, perhaps in terms of
18 involvement for specific uses.

19 When we ended up introducing a process
20 there was very, very little information that was
21 available in terms of a document forum. In talking to
22 the Ministry of Natural Resources, who have been very,
23 very helpful, they had land use information that was on
24 a much larger scale and perhaps would fill this entire
25 room in terms of the area that we're speaking of.

1 I think Mr. Irwin had indicated there
2 were somewhere in the range of about 3,300 square miles
3 in this study area. Well, the Ministry of Natural
4 Resources have a program where the maps are taken and
5 enlarged and information presented and, in this
6 particular case, what I tried to achieve is to try to
7 get this information along with the information from
8 the community itself and the resource material that I
9 was able to find to try to come up with a composite and
10 this map is that composite of information.

11 MR. IRWIN: Q. Mr. Dolcetti, the Board
12 has indicated they would recess at 12:00. This might
13 be an appropriate time to recess and we will get into
14 the detail of how you developed the map after lunch.

15 A. Certainly.

16 Q. If that meets with your pleasure.

17 MADAM CHAIR: That's fine, Mr. Irwin.

18 We will be back at 1:30. And how long do
19 you think your examination-in-chief will take with Mr.
20 Dolcetti?

21 MR. IRWIN: About an hour.

22 MADAM CHAIR: About an hour. Well, how
23 quickly will cross-examinations be conducted on these
24 two witnesses. Mr. Freidin?

25 MR. FREIDIN: Quickly.

1 MADAM CHAIR: Thank you.

2 Mr. Cassidy, will you be cross-examining?

3 MR. CASSIDY: I may have a very few
4 questions, maybe four or five.

5 MADAM CHAIR: All right. And Ms.
6 Seaborn?

7 MS. SEABORN: At this point, Madam Chair,
8 I don't anticipate having any questions for these
9 witnesses.

10 MADAM CHAIR: All right. And whose
11 evidence will you be leading after Mr. Dolcetti's?

12 MR. IRWIN: Mr. Elliott.

13 MADAM CHAIR: Mr. Elliott. Now, you
14 talked about seven witnesses. Will there be others in
15 addition to the ones we have here, Mr. Irwin, are more
16 witnesses coming tomorrow, because we have -- it looks
17 like we have about five witnesses here today.

18 MR. IRWIN: There's three more, along
19 with...

20 MADAM CHAIR: So we will have five
21 witnesses altogether, and it sounds as if we will
22 definitely be getting to Mr. Elliott fairly early this
23 afternoon.

24 MR. FREIDIN: No, he said three more on
25 route.

1 MADAM CHAIR: Oh, three more on route.

2 MR. IRWIN: Which means there's seven
3 altogether.

4 MADAM CHAIR: So three more will be
5 coming tomorrow?

6 MR. IRWIN: Two more.

7 MADAM CHAIR: Two more will be coming
8 tomorrow.

9 MR. IRWIN: Michael MacGuire and Joe
10 Stanley Simmons -- oh, three more, Harold Michon.

11 MADAM CHAIR: All right. I see Mr.
12 Patrick MacGuire. Was it a boy or girl, Mr, MacGuire.

13 MR. MacGUIRE: Boy.

14 MADAM CHAIR: It was a boy.
15 Congratulations.

16 All right. Well, I would expect we would
17 probably finish with Mr. Elliott's evidence today. And
18 is Mr. King or Mr. MacGuire prepared to go on this
19 afternoon as well?

20 MR. IRWIN: I don't know if they will be
21 reached.

22 MADAM CHAIR: Well, the two gentlemen who
23 are here today --

24 MR. IRWIN: They're here primarily to see
25 the process. We anticipated meeting tonight and

1 starting tomorrow.

2 MADAM CHAIR: All right. So your plan
3 would be to complete Mr. Elliott's evidence today and
4 to begin tomorrow with the other gentlemen?

5 MR. IRWIN: Possibly, depending on
6 cross-examination. I can only gauge mine.

7 MADAM CHAIR: Okay, thank you. We will
8 be back at 1:30.

9 ---Luncheon recess at 12:00 p.m.

10 ---On resuming at 1:30 p.m.

11 MADAM CHAIR: Please be seated. Mr.
12 Irwin.

13 MR. IRWIN: Q. Mr. Dolcetti. Before the
14 recess, Mr. Dolcetti, you were just getting started on
15 the map and development of the map, the methodology you
16 used. Please continue.

17 A. Yes. Just perhaps that, once again
18 to reiterate, in terms of the process that was
19 developed in getting the information, we certainly had
20 to rely heavily on government agencies, especially MNR,
21 and a lot of the information with regards to the
22 development of uses within the subject area.

23 We had also received information from the
24 community itself, residents that are in the area, and
25 when we did have our public meeting in the community

1 hall we did have a composite prepared without the kind
2 of details and we allowed them to provide us with some
3 information as well that they knew that was in the
4 study area.

5 Q. These would be trappers, fishermen?

6 A. Yes, it was basically the same group
7 of people, the trappers, the fishermen, some residents
8 in the area that said: Yes, I know about a particular
9 use on the subject properties.

10 Q. How did the MNR, say, trapping lines
11 compare to the actual users' trapping lines?

12 A. Well, in terms of -- it was
13 interesting because we had some lines that were
14 prepared on the map and then we asked the trappers to
15 provide us with information with regard to the areas
16 that they trapped and how they related to trap lines.

17 Now, on this particular map the trap
18 lines are identified in this hatched -- it's almost
19 like a railway track all the way through and, as you
20 can see, there are several trap lines.

21 I think my notes, probably you're having
22 somewhere around 67 -- maybe 60 or so trap line
23 licences but some of them are smaller, some of them are
24 larger.

25 But what was interesting was the fact

1 that, in some case the trap lines were shown here very
2 rigid, whereas in terms of the actual utilization of
3 these areas, the people that had trap lines would not
4 necessarily follow the rigid line, they would say:
5 Okay, I go from this point to this point and it may
6 circle a large perhaps rise in a hill area, it may
7 cover another lake, there was nothing in terms of
8 saying: That's the line and I must not cross over this
9 line.

10 They didn't look at it that way, they
11 looked at basically land forms and used that as a
12 barrier. And that was very true with the area south of
13 the subject lands -- pardon me, within the subject
14 lands I should say.

15 Q. The southerly quarter.

16 A. That's right. We also, in terms of
17 obtaining information, you can see there's a number of
18 red dots and yellow dots and blue dots, and the idea
19 here was to say: Okay, fine, from the information that
20 we've received we've identified it as perhaps a cottage
21 or an outpost or, for example, a gravel pit.

22 I wanted them to also tell me as best to
23 their knowledge if this was true, and it was remarkable
24 the amount of information I received from the people
25 there as well as from the MNR that coincided.

1 In other words, a lot of the areas that
2 were shown as cottages and outposts were also
3 identified by the residents in the community that:
4 Yes, that was a cottage or an outpost or that was a
5 gravel pit, and this was an area that was set aside for
6 a specific activity.

7 One of the interesting things in terms of
8 looking at this particular area is the sense of
9 community. Here again there are some major physical
10 forms, certainly the lake, the higher ground and, of
11 course, other lakes that bound the east barrier.

12 One of the other things that you look at
13 in terms of this community, how it was developed and
14 the kind of settlement patterns. You'll note that the
15 area is influenced by a highway, it's also influenced
16 by a railroad and not uncommon to have that happen.
17 You have settling patterns, and that's basically what
18 has happened in this particular area.

19 The settlements of Jellicoe and Geraldton
20 and Beardmore and Macdiarmid all follow some form of
21 transportation network. Because, as you can see, the
22 area is very large, about 3,300 square miles and in
23 this particular case, to get from one point to other,
24 you have only a few ways of getting there obviously.
25 One is by water, another one is by perhaps rail and the

1 other one is by road. Certainly you can fly in, but
2 you're limited because of the terrain. So your
3 settlement pattern has occurred along the major
4 corridors. And really to the interior has been left
5 for more remote type uses.

6 In looking at this kind of use we
7 certainly wanted to get a feeling from the community as
8 to whether or not some of the patterns were just
9 occurring or if there was some justification for them
10 and, in a lot of cases, in speaking to a couple of the
11 trappers and the hunters and fishermen, they said:
12 Yes, there has been some sensitivity to the location of
13 communities along this corridor. The utilities are
14 along this corridor, access to this corridor is there,
15 so that's a pretty natural growth scenario.

16 Another interesting feature that we were
17 able to obtain from the community is the location of
18 perhaps its burial grounds, religious sites, sensitive
19 areas, and this is also identified on the land use map,
20 and it's almost like a -- oh, probably a herring bone
21 design, more landscaping features. But here again,
22 there was no visitation by myself or any staff member
23 on the location, again, it was basically receiving
24 information from people that know the area and saying:
25 Yes, there is an importance in this area, there is an

1 importance in the top end here, these areas have been
2 set aside.

3 There is also some sensitive and wildlife
4 areas that were provided to us and, here again, that
5 was done with MNR's location.

6 MNR, my understanding in talking to their
7 offices, they do have opportunities where trained
8 individuals do, through the summer program, travel the
9 area and do locational analysis of activities and, here
10 again, the areas that are shown within the study area
11 have been identified in that process.

12 In terms of the land use, because there
13 has been the settlement patterns along this corridor,
14 there has been supportive uses and activities; in other
15 words, in the communities themselves there are
16 education for the people that are in the area, whether
17 they are in Jellicoe, whether they are in Beardmore,
18 Macdiarmid, there are opportunities for elementary
19 school.

20 High school in Geraldton I believe is the
21 area that they have to be transported to and,
22 unfortunately, with universities, basically Thunder Bay
23 I understand.

24 Nipigon also provides education to them
25 as well, but the idea here is that with the settlement

1 and communities locating on the corridor, there's
2 opportunities for the education, as I mentioned, also
3 some commercial activities, certainly the development
4 in these areas have occurred because of the CN, some of
5 the employment opportunities are in the CN. So here
6 again, each one of these communities have developed for
7 their own purpose. And we have documented just in
8 general form, in our submission, the settlement
9 rationales.

10 Q. Okay. Now, generally does this
11 particular area have an identity or is this just a
12 block of 3,000 odd square miles out of northern
13 Ontario, bush and water?

14 A. Well, it has an identity certainly
15 for the people that are living in the communities, as
16 well as the people that are very familiar, there is a
17 sense of ownership.

18 People that we've talked to hunt and
19 fish, they hunt and fish for their own livelihood, they
20 also hunt and fish for perhaps commercial reasons.

21 It's an employment base for them and,
22 here again, they've divided the area and said: Yes,
23 this is my area, this is the area that I work, have
24 experience in, I would like to have this area remain as
25 best and have some controls in it so that there would

1 be activities for future generations.

2 So in talking to the people at our
3 community meeting, that is the impression I received
4 and the sense of ownership or knowledge of the site.

5 Q. Now, you went into Macdiarmid and met
6 with the people there. What kind of identity does
7 Macdiarmid have?

8 A. In terms of the community itself,
9 there is a sense of wanting to remain in the area,
10 there's a sense that people have committed themselves
11 to activities. I talked to one individual that
12 happened to have a --

13 Q. Well, maybe I'll lead you a bit.
14 Macdiarmid is basically a community of Native people;
15 right?

16 A. Yes.

17 Q. Aboriginal people. Is it fair to say
18 that you've got neatness in that half of the community
19 is a reserve and half the community is not a reserve,
20 yet it is a community of Native people.

21 A. Oh, yes. I guess I was getting into
22 that in terms of that relationship. It was just that
23 in talking to one individual, and it was a very civil
24 conversation, the fact that he was offering a level of
25 service in terms of repair to vehicles in the area, and

1 living in that area he repairs vehicles for both
2 community of Macdiarmid as well as people that are on
3 the reserve.

4 And in talking to him about it, he felt
5 very comfortable that there is a community sense in
6 there that they can both benefit by their experience,
7 and it was just a matter of the individual saying:
8 Yes, I happen to repair vehicles quite well -- very
9 well, and I like to do it for the area itself. And
10 here again, you have a reserve as well as you have the
11 rest of the community in Macdiarmid.

12 Q. Did you have an opportunity to speak
13 to any of the reeves?

14 A. Pardon me?

15 Q. Did you get an opportunity of
16 speaking to any of the reeves?

17 A. The only reeve that I should qualify
18 is in Beardmore, the individual in Beardmore. I
19 apologize...

20 Q. Rutherford?

21 A. Yes, Mr. Rutherford, yes. I talked
22 to him and he had commented with regards to the amount
23 of detailing that we provided for the community itself
24 in Beardmore and we said that really it was just an
25 overview, it wasn't a necessity of looking at every

1 particular road, every particular home in each of the
2 communities, it was just a sense of opportunities for
3 what is in the area generally, what's the importance of
4 the area, and we added a few more sentences to the
5 importance of Beardmore, because he thought that
6 perhaps maybe it should have been longer than one
7 paragraph.

8 Q. He sensed that there was more written
9 about Jellicoe than about Beardmore?

10 A. Yes, but the idea here was that, I
11 think that he was looking at the quantity of words
12 rather than the quality of words.

13 MADAM CHAIR: Excuse me. Mr. Dolcetti,
14 what is the population, excluding the populations you
15 have identified, for these four communities in this
16 area?

17 THE WITNESS: The population probably,
18 our best count in terms of receiving information from
19 the census, you're looking at about 1,100 or so people
20 that are in the communities that we have identified,
21 and you're probably looking at another 300 or so beyond
22 that, and so you're looking at perhaps maybe a total of
23 1,500 people that we have record of in the study area.

24 MR. IRWIN: Q. Okay. Now, I want to get
25 on to land use and --

1 MR. MARTEL: Can I ask a question. As
2 someone involved in planning, unless there is some sort
3 of development, even with the acreage, is it possible
4 for 1,500 people to have a decent standard of living,
5 unless some industry, whether it being mining, forestry
6 or so on, is carried on, given the number of people
7 that are there? And I mean, Jellicoe used to have a
8 mine, I guess that's closed down.

9 THE WITNESS: Yes.

10 MR. MARTEL: What is there? How do they
11 survive?

12 THE WITNESS: I think one of the things
13 that you are finding throughout all northern Ontario
14 communities is a sense that: Yes, you know, you have a
15 mining community, the particular material has been
16 either -- changes in times, requirements, you have a
17 loss of employment, and most of the communities are
18 looking towards tourism or opportunities where they
19 return back to sort of the traditional land activities
20 of hunting and fishing.

21 A good community, Long Lac, which is not
22 terribly far from this area, they have got a business
23 plan that basically looks at trying to develop a more
24 tourist orientated activity.

25 MR. MARTEL: But the Rosehart study, I

1 think it was Rosehart who said that tourism could not
2 meet the expectations of northern Ontario.

3 THE WITNESS: I suppose it depends in
4 terms of a number of things. Certainly the cost
5 associated with certain specific uses, the cost of
6 transportation is very, very key in northern Ontario.
7 You don't have the numbers that are travelling as you
8 did perhaps 10 or 15 years ago because of the cost of
9 travel.

10 The activities and the beauty of the
11 area, especially the land forms. The hunting and
12 fishing. I know in the areas of Long Lac, that people
13 in the United States will travel the midwest, Chicago,
14 and spend several weeks in this community for the fact
15 of hunting.

16 MR. MARTEL: But that's all seasonal.

17 THE WITNESS: I can appreciate that.

18 MR. MARTEL: It doesn't provide a living
19 for anyone on a year round basis.

20 THE WITNESS: The fact of activities,
21 like the traditional lumbering industries, traditional
22 mining industries, that presents difficulties in this
23 day and age if you're not of large size and having a
24 marketshare, that is one of the difficulties.

25 I think that you'll find that even in the

1 smaller communities. Look what Elliot Lake is going
2 through right now in terms of readjusting their
3 particular environment because the loss of that
4 activity in this area. You have smaller communities
5 where you have populations in around four or 500
6 people, not terribly large and not overdemanding I
7 suppose on the level of service but, however, requiring
8 a certain lifestyle and standard that would be
9 appropriate to live.

10 MR. IRWIN: Q. Haven't you actually got
11 three styles of communities there. Jellicoe which is
12 designed for outfitters, and then Macdiarmid to the
13 south which is a Native community managing to get along
14 better with less really, not high expectations with
15 people there knowing a bit about: Well, they know a
16 little bit about logging, a bit about fishing, and then
17 Macdiarmid in the middle relies now I suppose on
18 construction such as the Sturgeon River projects.

19 Do these three units have distinct -- I'm
20 giving evidence, but I'm trying to lead you to a
21 certain extent. These are not the same type of
22 communities.

23 A. Again, looking at the population
24 levels that you're speaking of, like the four and 500,
25 the 300 people, again, yes, some of the activities can

1 be seasonal but can be very, very productive if run
2 properly.

3 There are opportunities for special
4 industries to be in there, construction, road
5 construction. Again, your people in the communities
6 have lived under adverse conditions for quite some
7 time, I suppose, that it may not meet a standard that
8 we perhaps would strive for, but for them it's
9 something that they've lived for many years with and
10 it's been the ups and downs of northern Ontario
11 communities. It's not the only example.

12 But I am afraid I wasn't aware of that
13 particular overall statement of tourism, because there
14 are a number of communities even --

15 MR. MARTEL: Well, I think Rosehart was
16 the author of that that came out about three years ago,
17 that northern Ontario couldn't rely on tourism to make
18 up for the shortfalls that were occurring as a result
19 of the decline of mining and so on.

20 There was a conference at the University
21 of Sudbury, the Laurentian, a couple of years ago on
22 that particular document.

23 THE WITNESS: Well, certainly the levels
24 of activity and certainly the economic significance,
25 when you reduce perhaps the income levels that are

1 expected in terms of a miner in comparison to someone
2 that runs a motel and has a housekeeping unit,
3 certainly the levels of employment are much different
4 and the expectations and the disposal of income
5 obviously would be different.

6 So, yes, tourism does not pay as well,
7 but in terms of looking at the single most growth in
8 Ontario, you're finding that the tertiary industry, the
9 service industry is becoming more and more important
10 and your industries are downsizing because it's just
11 too costly.

12 MR. IRWIN: Q. Now, you've seen
13 proposals on bylaws and planning and the licences and
14 so on that Mr. Aiken has talked about and in the report
15 we discussed. How would you visualize this working?

16 A. Well, certainly in terms of any
17 community or in terms of the traditional community
18 where you have zoning bylaws, official plans, you
19 designate specific areas for specific activities,
20 whether they may be for commercial, whether they may be
21 for residential or seasonal or institutional, in
22 looking at the representation where you would have a
23 body that oversees the approval authority of this area
24 in terms of activities having the ELNC in terms of
25 50/50 per cent, 50 per cent from the community and 50

1 per cent appointed by the Ontario Government, there
2 would be a balance, I would see, in terms of providing
3 for a direction as to what areas should be looked upon
4 in terms of specific protection.

5 Obviously there are situations where we
6 have identified through the planning process
7 sensitivity areas or areas of religious significance,
8 and through the process of control obviously these
9 areas can be identified and protected from overuse or
10 activities that would damage the longevity or certainly
11 the importance of the area.

12 So I can see the process working, again,
13 in a somewhat similar fashion where you start
14 identifying an implementation process of controls so
15 that you do have an area that can serve the people very
16 well now as well as protect in the future.

17 Q. Okay. I'm more concerned -- I
18 understand that. And say someone needs a permit, how
19 would you compare this to someone applying to a city
20 council or to a Ministry, do you see it the same
21 process, either slower, faster, more stricter, less
22 stricter, more expedient?

23 A. I think in terms of the process, if
24 you enable the controlling mechanism to be very
25 familiar with the area, and if an individual comes in

1 to provide for an activity on a site, the group that's
2 very familiar with the area would already have had some
3 understanding of the importance or the implications of
4 introducing that use.

5 So if this happens to be a situation
6 where we have identified a sensitive area and an
7 individual wants to do some activity, you would go to
8 this control panel and say I would like to get a permit
9 to do this activity in this area, let's say perhaps
10 explore mining opportunities, or perhaps present a
11 cottage development, a cabin or something in this area,
12 automatically it would trigger not only the fact that
13 this is a schematic process, there are no dimensions on
14 this area so that you can go either way, but the idea
15 of someone who is familiar with it would say: I'm
16 sorry, that is a very sensitive area, we would have to
17 look at it much more carefully, and perhaps the process
18 would allow a better understanding.

19 And I would believe it would be much more
20 expedient because you have knowledgeable people that
21 are involved in the overall development of the site.

22 We found that in terms of the overall
23 planning process in Ontario that in terms of
24 communities having more jurisdiction in the approval
25 process has led to developments being better -- in

1 terms of expedience and as far as quality because, here
2 again, the community itself that's been planned is much
3 more apprised of what's happening.

4 We did that with subdivision activity,
5 we're doing that with severance and consent
6 applications. So instead of going to Toronto and
7 perhaps having a Toronto planner review the
8 applications, the process is being handled through the
9 different municipalities to allow them the opportunity
10 be more knowledgeable and the person that's coming into
11 the process says, yeah, that person really knows the
12 area, he's been there.

13 Q. So you see something bigger than a
14 municipality, smaller than the MNR, more stationary,
15 more knowledgeable, more responsive?

16 A. Yes, I do, because I think that in
17 looking at -- this is an area that is some 3,300 square
18 miles, it is an area that is inaccessible at times,
19 obviously, you know, it's nice in the wintertime, you
20 can go from one point to another. In the summertime,
21 yes, there could be some terrain problems and you can't
22 get to the site, you have to use the highways.

23 There is knowledgeable people and
24 certainly I'm not the most knowledgeable in this area,
25 but the idea here is that you have people that would be

1 assigned as part of the ELNC that would have
2 responsibilities to see that the planning program and
3 activity and land use is properly attended to.

4 Q. I have no further questions. Do you
5 wish to add anything, Mr. Dolcetti?

6 A. Just from the standpoint of
7 identifying that the area itself does have certainly
8 the kinds of opportunities for people that live to
9 certainly live, I would say, comfortably, to allow them
10 to have a good quality and standard of living and
11 providing for their families, and allowing them to be
12 able to have some flexibility in terms of being able to
13 settle an area that they can look at different forms of
14 opportunity, whether it happens to be in forestry, it
15 happens to be in fishing, it happens to be in mining,
16 it happens to be in trapping or in berrypicking, it is
17 really a community that we tried to identify.

18 And also in terms of social patterns,
19 there are educational opportunities that can be
20 advanced and allow people in the area to live as well
21 as participate in its growth and really, I think from a
22 standpoint of maintaining that growth, there should be
23 a clear direction in the implementation process for its
24 control.

25 MR. IRWIN: Thank you.

1 MADAM CHAIR: Thank you, Mr. Irwin.

2 We will begin the cross-examination.

3 Mr. Cassidy, do you have any questions
4 for either Mr. Aiken or Mr. Dolcetti?

5 MR. IRWIN: I have one section of
6 questions I wanted to ask Mr. Aiken. Maybe I could
7 deal with that now, before the cross-examination.

8 MADAM CHAIR: Okay. You want to recall,
9 Mr. Aiken.

10 MR. IRWIN: Yes, please.

11 MADAM CHAIR: All right. Thank you, Mr.
12 Dolcetti.

13 JERRY DOLCETTI, Resumed

14 HERBERT JOHN AIKEN, Recalled

15 DIRECT EXAMINATION BY MR. IRWIN:

16 Q. Mr. Aiken, you had indicated in your
17 examination you were comparing what you were proposing
18 was more responsive or more contemporary - I forget
19 your exact words - the needs of today as regards who
20 controls what, who makes what decisions, what kind of
21 consultative process there is in place.

22 Have you had an opportunity of looking at
23 the MNR draft terms and conditions of January 6th,
24 1992?

25 MR. AIKEN: A. Yes, I have.

1 Q. We won't be back here. I'm
2 interested in your comparisons between what you're
3 proposing and what's being proposed in the MNR terms
4 and conditions of January 6th, 1992.

5 A. Well, I guess it's pure MNR,
6 unadulterated by outside influences. There's no
7 positive invitation to Native people to participate
8 either in the front end planning or in the process
9 itself, the language that is used at several places is
10 where a Native community chooses to, almost in the hope
11 that they will not.

12 Q. I think that is used several times in
13 the report; isn't that correct?

14 A. It is throughout.

15 Q. So they're invited into the
16 consultative process if they choose to be invited,
17 something along those lines?

18 A. Yeah. It does not in a very positive
19 way delineate the specific role for the interests of
20 native people, and perhaps in so doing that's a
21 reflection of the value they place on them in the
22 process.

23 And there doesn't appear to be any way in
24 which Native people could affect the process once it's
25 in place. Those are my two major concerns.

1 Q. Did you get a chance to look at --

2 MR. MARTEL: Could I ask a question at
3 that point. Does that apply then for, concerning this
4 process, the other stakeholders; are they not in
5 essentially the same position?

6 MR. AIKEN: Yes, yes, that's the -- I
7 failed to find any dramatic change from what has been
8 in this document, it appears to be more of the same
9 with the some rearrangement of words and so on.

10 But I'm not left with the sense that the
11 participation of the non-professionals is solicited
12 with very much vigor or interest. Someone may quarrel
13 with that, of course.

14 MR. IRWIN: Thank you, Mr. Aiken.

15 Do you want to just stay there because
16 some may have some questions.

17 MADAM CHAIR: Mr. Cassidy, will you be
18 cross-examining?

19 MR. CASSIDY: Just four or five
20 questions, Madam Chair. Maybe I can do it from where I
21 am. Can you hear me, Mr. Aiken?

22 MR. AIKEN: Yes, I can.

23 CROSS-EXAMINATION BY Mr. CASSIDY:

24 Q. Mr. Aiken, do you know if Domtar
25 Forest Products has a forest management agreement which

1 would overlap or be part of the ELNC area which is
2 depicted on the large map, I think it's Exhibit 2158?

3 MR. AIKEN: A. I don't -- I can't -- I
4 don't know that.

5 Q. Would you know if Kimberly Clark
6 Corporation would similarly have a forest management
7 agreement which would be within that area?

8 A. No.

9 Q. Do you know if Canadian Pacific
10 Forest Products would have an FMA or forest management
11 agreement within that area?

12 A. No, I'm not certain of that.

13 Q. How about Abitibi-Price?

14 A. No.

15 Q. Do you know if they have --

16 A. No. That wasn't part of my inquiry,
17 as to which companies held what agreements.

18 Q. So I can take it that you did not
19 have discussions with any of those companies I just
20 named about this proposal?

21 A. No, we did not.

22 Q. You did have some discussions, as I
23 think Madam Chair and Mr. Martel have asked you about,
24 some discussions with the tour outfitters in this area,
25 and I'm still not sure about who you spoke to.

1 As I understand it you had some sort of
2 summit or meeting with them in the Jellicoe area; is
3 that correct?

4 A. Summit is too grand a word, I think.

5 Q. You pick the word.

6 A. A meeting.

7 Q. In the Jellicoe area; is that right?

8 A. And those who were in attendance had
9 a copy of this material and what I reported on this
10 morning was their response and their recommendation and
11 there was one recommendation which had to do with the
12 the fee and that change was made.

13 Now, I don't think they -- I'm satisfied
14 they were not speaking on behalf of NOTOA but were
15 offering their personal opinions, or any other group
16 for that matter.

17 Q. Right. Is it fair to say Jellicoe is
18 sort of in the upper half of the ELNC proposed area.
19 I'm looking at that big --

20 A. Yes, I would think so. Upper half,
21 yeah, toward the top right.

22 Q. And Nipigon is down just about 10
23 miles south?

24 A. To the south.

25 Q. South of the border; right?

1 A. Yes.

2 Q. I'm told there's a lot of tour
3 outfitters. Mr. Dolcetti, you may be able to help on
4 this. There's a lot of tour outfitters in the southern
5 part of that area; is that your understanding?

6 MR. DOLCETTI: A. Yes, we've identified,
7 again, in terms of the tour outfitters you have
8 trappers, cabins and outpost cottages in the red that
9 are showing down at this end.

10 Q. That's the south end?

11 A. Can you see that? The south part,
12 okay, towards the Nipigon area.

13 Q. That's what I was --

14 A. They're down here, okay.

15 Q. That's what I thought.

16 A. They're actually throughout, but
17 there is a concentration in this area here.

18 Q. Mr. Aiken, were you in conversation
19 with those tour outfitters at the Jellicoe meeting?

20 MR. AIKEN: A. No.

21 Q. So your evidence does not relate to
22 what their thoughts were?

23 A. No.

24 Q. Do you know what their thoughts were
25 on the proposal?

1 A. No.

2 Q. At page 15 of Exhibit 2155, that's
3 where -- I'm sorry, page 16, on those two pages we have
4 those seven recommendations and and Mr. Irwin referred
5 to No. 5 as being self evident.

6 I apologize for this question, but maybe
7 it isn't to me, but would that include occupying lands
8 or leases. Do you mean that to include things like
9 forest management agreements?

10 A. No, this would be in the sense that
11 the forest management agreement doesn't result in any
12 conveyance of ownership of land, but but this would
13 apply to those who -- cottage lots, tourist
14 developments and so on.

15 Q. I see. So the occupation there -
16 that's where I was having trouble with the conveyance
17 of occupation - the occupation you're talking about in
18 No. 5 is cottage lots, for example?

19 A. Yes. There's not ownership but there
20 is occupation.

21 Q. But it would not include forest
22 management agreements?

23 A. No.

24 Q. Okay. And, Mr. Dolcetti, I take it,
25 I look at your resume, you have a degree in geography

1 from the University of Windsor?

2 A. That is correct.

3 Q. You do not have training or
4 background that would qualify or consider yourself a
5 sociologist; is that correct?

6 A. A sociologist?

7 Q. Yes.

8 A. No.

9 Q. Nor would you consider yourself a
10 political scientist?

11 A. No.

12 Q. Or political economist?

13 A. I'm not a political economist, no.

14 Q. In fact, you would not consider
15 yourself an economist of any type; is that correct?

16 A. Well, I guess in terms of the
17 definition, I've been involved in economic development
18 but it's related to project development and management.

19 Q. But you would not consider yourself
20 to be an economist?

21 A. No.

22 Q. You rely on the opinions of other
23 economists in particular situations?

24 A. Yes.

25 MR. CASSIDY: If I could just have one

1 more minute, Madam Chair.

2 Just a final question.

3 Q. Mr. Dolcetti, you talked about some
4 of these communities - we may hear evidence about this
5 and if I'm premature you can advise me - but that some
6 of the communities were established around
7 transportation networks.

8 MR. DOLCETTI: A. Yes.

9 Q. And as I look at the map I see
10 communities like Auden, Mud River and Ferland which in
11 fact are right on the CNR line.

12 A. Mm-hmm.

13 Q. Am I correct that, in fact, those
14 communities were established there because of the CNR
15 line?

16 A. Again, I did not -- the communities I
17 was referring to along the corridor were communities
18 that were like Jellicoe, Macdiarmid, Beardmore, in that
19 area, okay.

20 In terms of the smaller communities,
21 certainly that could be a position that they were on
22 the railway lines because they could have been an area
23 where they may have stayed overnight, employees --

24 Q. Sorry, you're speculating now?

25 A. Again, I didn't look at those

1 communities. It was more or less the corridor along
2 the highways.

3 Q. That's what your comments have been
4 talking about?

5 A. Yes.

6 MR. CASSIDY: Those are my questions
7 Madam Chair. Thank you.

8 MADAM CHAIR: Thank you, Mr. Cassidy.

9 Ms. Seaborn?

10 MS. SEABORN: No questions, Madam Chair.

11 MADAM CHAIR: Thank you.

12 Mr. Freidin?

13 CROSS-EXAMINATION BY MR. FREIDIN:

14 Q. Mr. Aiken, you made a comment about
15 certain wording in the terms and conditions being pure
16 MNR unadulterated by outside influences and made the
17 suggestion, sir, that certain terms and conditions
18 regarding the involvement of Native people was put
19 there almost in the hope that they will not choose to
20 participate.

21 Mr. Aiken, did you have any discussion
22 with MNR in terms of what was motivating them in terms
23 of putting those terms and conditions in the January
24 6th document?

25 MR. AIKEN: A. No, and I'm sure they

1 would haven't had much to say to me if I had.

2 Q. And, Mr. Aiken, are you aware of the
3 manner in which the Native consultation process terms
4 and conditions were developed?

5 A. I knew there was some consultation,
6 to the nature and extent I'm not familiar with that.
7 It's the language I think that is found troubling.

8 Q. Do you know whether in fact there
9 were negotiations with the Nishnawbe-Aski Nation in
10 fact with the exact wording of those terms and
11 conditions? Do you have any information on that at
12 all?

13 A. No. I don't.

14 Q. Mr. Dolcetti, you in reference to the
15 map that was up there described a process of having a
16 public meeting where you had a map prepared in advance
17 and you had people to come out to comment on it and
18 provide additional information.

19 MR. DOLCETTI: A. Yes.

20 Q. Is that a process that you have used
21 in the past in similar exercises?

22 A. Yes. In terms of providing
23 information, we obviously feel that there has to be
24 public input and what we have done is, in this
25 particular case, we did have this map, it did not have

1 all the information on it that you see here, we invited
2 the information from the community as to what they saw
3 was missing.

4 Some of the areas they centered on were
5 certain cabin locations, trap lines that they had, so
6 that they felt that they were offering some information
7 which was important, because I didn't have it.

8 Q. Right. I took it from your evidence,
9 Mr. Dolcetti, that you found that process of putting up
10 the map and dealing with the public input in the manner
11 that you testified to was a successful and sort of a
12 useful and practical approach to obtaining information
13 and an indication of issues of concern.

14 A. Oh yes.

15 Q. Thank you. And you talked in your
16 evidence about planning for an area north of Sault Ste.
17 Marie up to the Montreal River?

18 A. That's correct.

19 Q. And in relation -- first of all, how
20 large an area is that that you were talking about?

21 A. It was probably about maybe double
22 the size of this area.

23 Q. Now, you said in your evidence, I
24 think, that the process of trying to introduce sort of
25 controls or regulation or planning in that area was a

1 long and difficult process and, in fact, it was still
2 ongoing?

3 A. Yes.

4 Q. When did it start?

5 A. It started in 1968, I got involved in
6 it in '72, and it went on under our jurisdiction for
7 three years after that, and...

8 Q. Just stopping there. When did this
9 process start from Sault Ste. Marie, 19...?

10 A. About '68, about '68.

11 Q. Right. Can you describe in a general
12 way the sorts of issues which have been addressed or
13 which need to be addressed in that area?

14 A. In the Sault north area?

15 Q. Yes.

16 A. Everything from cottage development
17 to industry development, to harvesting, to fish
18 management, really everything in terms of land use that
19 you can think of, even highway access activities.

20 It's an area where it's got a tremendous
21 opportunity for growth with a lack of controls, and
22 when we got involved in it and we still -- MNR was
23 doing what they could, but, again, it's a large area,
24 it's staffing, you just can't handle everything, it's
25 impossible.

1 Q. Right. And are the kinds of issues
2 that are being addressed in that area north of Sault
3 Ste. Marie up to the Montreal River, are they similar
4 to the kinds of issues that you see have been addressed
5 in the study area?

6 A. Certainly there are, there are. Yes,
7 there are. They are similar in the sense that you have
8 activities where you have Native involvement --

9 MR. FREIDIN: Excuse me, excuse me. Mr.
10 Irwin, Mr. Aiken is under cross-examination. I don't
11 know whether you're trying to tell him what you want to
12 ask him under reply.

13 Madam Chair, I would ask that you
14 instruct Mr. Irwin not to speak to Mr. Aiken while he's
15 under cross-examination.

16 MADAM CHAIR: Thank you, Mr. Irwin.

17 MR. FREIDIN: Q. I'm sorry, you were
18 describing the similarities in terms of the...

19 MR. DOLCETTI: A. There are similarities
20 in terms of activities, there are Native lands claims
21 in the area, there are activities where there are
22 conflicts between the cottage development and the
23 permanent residents. So there's ideas here that, you
24 know, develop a scenario that you could say are similar
25 to what we have here.

1 Q. Mr. Aiken, you spoke about agreements
2 that had been entered into between mining companies and
3 various Native groups, I think it was in response to a
4 question from Mrs. Koven.

5 MR. AIKEN: A. Yes, that's correct.

6 Q. And I believe you indicated that
7 those agreements were entered into, at least in part,
8 to let those mining developments take place without
9 delay; is that correct?

10 A. Correct.

11 Q. Am I correct that the mining industry
12 and developments by the mining industry are not subject
13 to the Environmental Assessment Act?

14 A. That's my understanding.

15 Q. Is it your understanding that the
16 delay that was concerning the mining companies was an
17 indication by certain Native groups that if they didn't
18 negotiate certain things that they would request the
19 designation under the Environmental Assessment Act in
20 relation to the projects that they were planning to
21 undertake?

22 A. That's correct.

23 Q. An if in fact the designation request
24 was successful, if this Environmental Assessment is any
25 indication, it could in fact cause quite a delay for

1 the project?

2 A. That potential was there.

3 Q. Thank you. And you spoke about
4 having a meeting -- first of all, Mr. Aiken, when were
5 you retained to prepare this report or first get
6 involved in the preparation of witness statement No. 5?

7 A. September of '91.

8 Q. And I understand that there was a
9 meeting in Sault Ste. Marie where there was a number of
10 parties in attendance?

11 A. Yes, that's right.

12 Q. And you referred in your evidence, I
13 think again in answers to questions from the Chair,
14 that referred to a small group--

15 A. Yes.

16 Q. --of persons. Was the small group of
17 persons the group that attended the October 17th, 1991
18 meeting in Sault Ste. Marie?

19 A. Yes, I think that -- yes.

20 Q. Right?

21 A. I'm sorry.

22 Q. I can show you the list, if you want.

23 A. Well, just if you take a look -- all
24 right, yes. Read some names and that will --

25 Q. Let me just show you the list. This

1 is a list which was provided to us by Mr. Irwin.
2 (handed) I just want to confirm that the small
3 group --

4 A. It's the date that I'm having trouble
5 with, rather than --

6 Q. Oh, all right.

7 A. Yes, that's correct, yes.

8 Q. All right.

9 MR. FREIDIN: I would like to market as
10 the next exhibit - I don't believe this has been marked
11 an exhibit, Madam Chair - this is a list of people who
12 were in attendance at a working seminar in Sault Ste.
13 Marie on October 17th, 1991.

14 MADAM CHAIR: This will become Exhibit
15 2159. And did you say this was one page, Mr. Freidin?

16 MR. FREIDIN: Yes.

17 ---EXHIBIT NO. 2159: One-page list of people in
18 attendance at working seminar
19 held in Sault Ste. Marie, October
20 17, 1991.

21 MR. FREIDIN: Q. And can you confirm for
22 me that on this list, this small group, all were
23 related to OMAA either as consultants or members,
24 except for three individuals, the three individuals
25 being Mr. Steve Tool, Mr. John Kennedy and Mr. Butch
Elliott.

1 MR. AIKEN: A. Yes, that's correct.

2 Well, yes, that's correct.

3 Q. And Mr. Butch Elliott, Four Winds
4 Development Company, what kind of operation was Mr.
5 Elliott engaged in?

6 A. He is a consultant from Sault,
7 Michigan who has a wealth of experience in related
8 matters as being a chief and has some strong sense of
9 what may be appropriate or inappropriate.

10 Q. Right. Is that a Native development
11 company, Four Winds?

12 A. It's his company. He and his wife--

13 Q. I see, all right.

14 A. --are the principal owners of it.

15 Q. All right. And can you confirm for
16 me, Mr. Aiken, that you have not received an
17 endorsement of the model that you've developed from the
18 Ministry of Natural Resources?

19 A. No.

20 Q. That's correct?

21 A. The answer -- no, I have not received
22 an endorsement from the Ministry.

23 Q. Do you know when Exhibit 2155 was in
24 fact submitted?

25 A. Is that the -- mine are not marketed

1 with numbers.

2 Q. Let me put the question more
3 directly. You say you got involved in September?

4 A. Yes.

5 Q. Is that early or late September?

6 A. Early.

7 Q. Early September. Can you tell me the
8 number of weeks that it took you from the day you
9 started to the day you finalized Exhibit 2155?

10 A. January some time.

11 Q. The document I think was submitted --
12 was finished before that, in fact, circulated to a
13 number of people in December as I understand it; is
14 that correct?

15 And I tell you, maybe I'm wrong. I got
16 the impression when I looked at the document and I saw
17 a few letters which follow page 28 of the witness
18 statement.

19 MR. IRWIN: January 13th. It was filed
20 on January 13th.

21 MR. FREIDIN: Right. It was filed on
22 January 13th, but I'm assuming that it had been
23 circulated in its current form to a number of
24 organizations prior to that because we have commentary,
25 for instance, from the Township of Nipigon and the

1 Jellicoe Business and Tourism Association dated
2 December the 31st, so I'm just assuming --

3 MR. AIKEN: That would have been an
4 earlier draft. There were possibly three iterations, I
5 think in draft form with changes in each one.

6 MR. FREIDIN: Q. Well, were there any
7 substantial changes made then to the draft after
8 receiving the December 31st --

9 MR. AIKEN: A. Not substantial changes.

10 Q. So that you completed the document
11 basically in the form in which it is presented some
12 time before December the 31st?

13 A. It was being tied up, yeah.

14 Q. Do you recall whether that was
15 finalized in November or October or December?

16 A. No.

17 Q. You don't remember?

18 A. I have nothing to tie that to.

19 Q. Okay, that's fine. There is
20 commentary in the witness statement, and I believe in
21 your evidence, regarding the need for legislation,
22 provincial legislation and perhaps others to in fact be
23 amended should a model such as the one you're proposing
24 be put into place; is that correct?

25 A. Yes, that's correct.

1 Q. Could you just perhaps off the top of
2 your head - unless you feel you need to deal in some
3 more detailed consideration than that, Mr. Aiken -
4 provide me with a list of the pieces of legislation
5 that you believe would have to be amended by the
6 Legislature of Ontario for this model to in fact be
7 implemented?

8 A. It would take me a few minutes to go
9 through and make sure that nothing has been missed. I
10 have not prepared such a list.

11 Q. Can you give it any consideration,
12 and did you give it any consideration in fact in
13 developing the model?

14 A. Yes, but not in counting them.

15 Q. You didn't count them. Did you go
16 through the Revised Statutes of Ontario or any other
17 such document to sort of consider the implications that
18 the model might have for existing legislation, I mean,
19 the magnitude of the changes which might be required?

20 A. Yes. They're modest and, to the best
21 of my knowledge and understanding, they are -- the
22 number is not great.

23 But to answer your question, no, I did
24 not go through all the RSOs.

25 Q. Can you give me some examples of what

1 you considered at the time to be modest changes which
2 would be required to implement the model?

3 A. There may be a need to make some
4 change in the act dealing with unorganized communities
5 to recognize the ELNC lands or other of that sort.

6 There may be a need to make some changes
7 in the Ontario legislation with respect to the
8 proposals for Native enforcement.

9 There may be some need to make some --
10 there will be some need to make some changes in the
11 enforcement of hunting, fishing, control regulation.
12 That I think is it.

13 Q. Did you give any consideration to
14 whether any legislation which may need amendment was or
15 was not legislation which was within the mandate of the
16 Ministry of Natural Resources?

17 A. Not -- no, on the contrary, such
18 changes would be appropriately directed to those
19 ministries that had jurisdiction. It's not necessarily
20 all with the Ministry of Natural Resources.

21 MR. FREIDIN: Thank you. Those are my
22 questions.

23 MADAM CHAIR: Thank you very much, Mr.
24 Freidin.

25 ---Panel withdraws.

1 Mr. Irwin, would it be convenient if we
2 took our afternoon break now for 20 minutes and then we
3 could begin Mr. Elliott's evidence when we return.

4 Thank you.

5 ---Recess at 2:30 p.m.

6 ---On resuming at 2:55 p.m.

7 MADAM CHAIR: Please be seated.

8 MR. IRWIN: Mrs. Koven, I had originally
9 when we prepared witness statement No. 5 considered
10 putting some of the other material that I have
11 distributed in, but what would have happened is that
12 half of this witness statement would have been just
13 enclosures and I thought that would have thrown off the
14 statement.

15 I have distributed these documents. I
16 think there's a pile in front of you, a pile in front
17 of Mr. Martel, and a pile in front of each one of
18 counsel. That gives the members just a little better
19 understanding of how the Tribal court system works. I
20 place it there only to make the evidence a little bit
21 more understandable, if for no other reason.

22 This is Mr. Arthur R. Elliott. Have you
23 been sworn in, Mr. Elliott?

24 MADAM CHAIR: Hello, Mr. Elliott. Do you
25 wish to be affirmed?

1 MR. ELLIOTT: Yes.

2 MADAM CHAIR: Thank you, sir. Please be
3 seated.

4 ARTHUR R. ELLIOTT, Affirmed

5 MADAM CHAIR: With respect to this
6 material, Mr. Irwin, are we going to make it an
7 exhibit?

8 MR. IRWIN: Only if Mr. Elliott refers to
9 it. It's a standard handout on the Michigan side and
10 it's more historical documentation than anything else.
11 I think if -- is that satisfactory. If we refer to it,
12 we can make it an exhibit, rather than...

13 DIRECT EXAMINATION BY MR. IRWIN:

14 Q. Mr. Elliott, you are a member of the
15 Chippewas of Nawash First Nation; is that correct?

16 A. Yes.

17 Q. And I believe that you once were the
18 chief at Cape Croker; is that correct?

19 A. Yes.

20 Q. When was that?

21 A. In 1986.

22 Q. Now, Chippewa is generally confined
23 to Michigan and Wisconsin and Minnesota; is that
24 correct, and it was just the wrong use of the word
25 Ojibway; is that not correct?

1 A. Yes.

2 Q. And the Ojibway or Treaty
3 Confederation actually goes right around Lake Superior
4 on both sides, north and south side, and as a nation it
5 was one time one nation; is that correct?

6 A. Right.

7 Q. Now, you are the owner I believe with
8 your wife of Four Winds Development, Sault Ste. Marie,
9 Michigan?

10 A. The Four Winds Development Company
11 was a three partnership with the -- I had a partner
12 named Dwight Teeple from Bay Mills Community, the Sault
13 Ste. Marie tribe of Chippewa Indians owned half of it,
14 Dwight Teeple owned a quarter and I owned a quarter.

15 Q. And you're a graduate of Algoma
16 University College; is that correct?

17 A. Not graduate, I didn't graduate from
18 Algoma.

19 Q. What do you have, a general --

20 A. It was in progress.

21 Q. Pardon me?

22 A. In progress.

23 Q. In progress, okay. One time you
24 worked for the Chippewa Tribe in Michigan; is that
25 correct?

1 A. Yes.

2 Q. In what capacity.

3 A. In around about 1977 I was personnel
4 manager with the Sault Ste. Marie tribe, Chippewa
5 Indians.

6 Q. And you have held certain seminars;
7 is that correct, seminars or conferences?

8 A. Yes.

9 Q. And your firm -- I don't want to go
10 into all of it - what major ones have you had in
11 relation to justice?

12 A. The biggest conferences that we did
13 sponsor were the Grand Assembly of Michigan Tribes.
14 That conference was designed to bring together tribal
15 groups in Michigan, federally recognized tribes,
16 federal counterparts and state counterparts to bring
17 them together to prioritize issues pertaining to Indian
18 people in the State of Michigan.

19 Q. That would be August of 1990; is that
20 correct?

21 A. The first one was in '89 in October
22 and again in August of 1990.

23 Q. And what was the purpose of that?
24 That was called, the second one, the Grand Assembly of
25 Michigan Tribes, No. 2. What was the purpose of that

1 conference?

2 A. Within the U.S. system there are
3 currently 200 pieces of legislation before Congress.
4 Any one of those pieces of legislation could have an
5 impact on federally recognized tribes.

6 Our Tribal Chairman felt it would be a
7 good idea to bring together all the parties involved
8 and sit down and go through the process of identifying
9 the major issues or concerns of the tribes and begin to
10 address them at a much local state level.

11 Q. In October of 1991 did you hold a
12 Canada/U.S. conference on aboriginal justice systems
13 that was developed by Four Winds Canada and Four Winds
14 Development Company Inc., is that correct?

15 A. Yes.

16 Q. What was that? Well I'll enter as an
17 exhibit the conference and the agenda of the most
18 recent conference. I forget the number.

19 MADAM CHAIR: This will become Exhibit
20 2160.

21 MR. IRWIN: Q. And the agenda, is this
22 the agenda, Mr. Elliott, of Grand Assembly, Michigan
23 Tribe No. 2?

24 A. This is information on our company,
25 even though...

1 Q. This wasn't the agenda then?

2 A. No.

3 MR. IRWIN: I'll just enter that one
4 then.

5 MADAM CHAIR: All right. This is an
6 agenda of a conference held on October 21st and 22nd,
7 1991, entitled the Canada/U.S. Conference on Aboriginal
8 Justice Systems in Sault Ste. Marie, Ontario and it was
9 organized by the Four Winds Company.

10 THE WITNESS: Yes.

11 ---EXHIBIT NO. 2160: Agenda of a conference held on
12 October 21st and 22nd, 1991,
13 entitled: Canada/U.S. Conference
on Aboriginal Justice Systems in
Sault Ste. Marie, Ontario.

14 MR. IRWIN: Q. I don't want to know
15 everybody that was there, but what was the type of
16 composition of that conference?

17 A. The idea of the conference was -- to
18 get a little background, I'm originally from Canada and
19 we have a company, a consulting company that is on both
20 sides of the border, in the U.S. and in Canada. We
21 look at issues that are contemporary issues in Canada.

22 Because we're familiar with some of the
23 tribal systems in the U.S, we try to put on a
24 conference like that to sort of look at the tribal U.S.
25 court systems as they exist. That was basically what

1 the conference was about.

2 The Aboriginal, the Manitoba judicial
3 court recommendations were made, there was a lot of
4 talk, there was a lot of publicity in the paper. A lot
5 of First Nations were going down to new Mexico to look
6 at the Navajo experience. The Navajo experience is
7 fine if you have a hundred thousand population.

8 Q. These were smaller populations then?

9 A. For smaller populations.

10 Q. But I'm interested in composition.

11 Did you have a tribal judge there?

12 A. Yes, we did.

13 Q. Tribal enforcers?

14 A. Tribal law enforcement officers.

15 Q. Did you have Jonathan Rutten who
16 started the --

17 A. The aboriginal from Toronto.

18 Q. Who started the aboriginal court, I
19 think started in January of this year?

20 A. Yeah.

21 Q. Was he present, was he a speaker?

22 A. Yes.

23 Q. Okay. Anyone else?

24 A. We had some people from up in -- from
25 the NAN or the independent First Nations up around

1 Sioux Lookout in that area.

2 Q. Okay. I want to go back to the
3 Michigan side. Now, you said that you were the
4 personnel manager of the Sault Ste. Marie tribe of
5 Chippewa Indians?

6 A. Yes.

7 Q. Is that correct. That would be from
8 1977 to 1979?

9 A. Yes.

10 Q. And are you familiar with the system,
11 the tribal court system that has developed on the
12 Michigan side and Minnesota and Wisconsin?

13 A. Yes.

14 Q. Now, are you more familiar with the
15 Michigan model?

16 A. More with the Michigan model.

17 Q. What I would like you to do, I saw
18 you - I'm not going to put it in as an exhibit because
19 I believe a copy of that map exists on one of your
20 documents - do you remember which one it was?

21 A. It's on page 7 of the Chippewa Ottawa
22 Treaty Fishery.

23 MR. IRWIN: Perhaps I'll enter that as an
24 exhibit. I have two copies there. It's called
25 Chippewa Ottawa Treaty Fishery and I have made copies

1 available to other counsel.

2 MADAM CHAIR: All right. This will
3 become Exhibit 2161 and it is a 13-page document
4 entitled the: Chippewa Ottawa Treaty Fishery
5 concerning the Sault Ste. Marie tribe of Chippewa
6 Indians, the Grand Traverse Band of Chippewa and
7 Ottawa Indians and the Bay Mills Indian Community, and
8 the date of publication was...?

9 MR. IRWIN: It had to be since 1987
10 because that's when the court was set up. It doesn't
11 have a date on it. I don't believe there's a date on
12 it.

13 ---EXHIBIT NO. 2161: 13-page document entitled the:
14 Chippewa Ottawa Treaty Fishery
15 concerning the Sault Ste. Marie
16 tribe of Chippewa Indians, the
Grand Traverse Band of Chippewa
and Ottawa Indians and the Bay
Mills Indian Community.

17 MR. IRWIN: Q. Now, over the lunch hour,
18 Mr. Elliott, you did a sketch and maybe looking at that
19 which is a page of what we have in this exhibit, you
20 might explain in chronological order how Michigan
21 evolved to this tribal court system?

22 A. And I can just give you some
23 background information that I've become familiar with
24 working with the Chippewa Ottawa Treaty Fishery
25 Association, Fish Management Authority.

1 And in the 1930s, 1930 the Michigan
2 Supreme Court ruled that Indians had to fish under
3 state laws in 1930s. In the 50s and 60s there was an
4 effort on the part of the Michigan Department of
5 Natural Resources to seriously look at cleaning up the
6 lakes and begin to enact and enforce some new
7 regulations. One of the regulations that they were
8 enforcing in the 70s, the latter part of the 60s and
9 early 70s was the non-use of gill net fishing.

10 When that was introduced the Bay Mills
11 Indian Community, one of the people at Bay Mills Indian
12 Community was big Abe LeBlanc who is an Indian
13 registered with Bay Mills and he openly defied that 30s
14 ruling, the Supreme Court ruling, and began to fish as
15 he seen fit. Of course he was charged and it began a
16 series of cases.

17 In 1976 the Michigan Supreme Court
18 ruled -- I have some of the information in these
19 materials as well, okay.

20 Q. You're doing fine in a summary
21 fashion.

22 A. In 1979 the U.S. District Court in
23 Michigan ruled in favour of the tribes stating that the
24 state had no jurisdiction over Indians fishing.

25 In 1981 the Federal 66th Circuit Court of

1 Appeals, after the '79 decision there was a lobby
2 group who raised money to take the case back. In 1981
3 again the Federal Court said that the state had no
4 jurisdiction.

5 However, there was still concern that
6 there was -- even though the tribes had established
7 that they were within their legal jurisdictions to fish
8 in these treaty waters that were set out here, the
9 question of conservation was still a concern, and it
10 was through a number of discussions that there was
11 subsequently an agreement between the Federal, the
12 State and support groups or sports groups and they
13 concluded an agreement in 1985 which was called the
14 Entry of Consent Order.

15 Between the Treaty tribes that were
16 involved in that was the Sault Ste. Marie Tribe of
17 Chippewa Indians, the Bay Mills Indian Community and
18 the Grand Traverse Band of Ottawa Indians.

19 And they signed an agreement which is to
20 be between 1985 to the year 2000. That agreement
21 basically covered three areas, conservation,
22 enforcement and enhancement.

23 Conservation was covered through an
24 organization called the Chippewa Ottawa Treaty Fish
25 Management Authority. They have a program in there

1 called a fisheries assessment program which has
2 biologists that look at and determine where and when to
3 close off seasons.

4 I might be going a little ahead here.
5 The agreement itself, although I have it in blue, if
6 you look at 7 of that map, you will see that the waters
7 have been categorized. Where there will be no -- zone
8 1 where there would be no commercial fishing at all,
9 tribal fishing, zone 2 where primarily lake trout were
10 rehabilitation, no tribal trout retention.

11 And you can see that they began to look
12 and break down those areas. Within those areas that
13 were under specific tribal jurisdiction, the biologist
14 would determine whether or not it was a good place to
15 fish and if they said to close off a bay or a harbor or
16 a point, a fishing point, then that was done, tribal
17 fishermen would not be allowed to fish there.

18 Q. I want to stop here. There's a
19 little asterisk. Okay, if this works - and we haven't
20 got through it yet - is it anticipated that this model
21 be moved on land?

22 A. Yes.

23 Q. How?

24 A. The inland question is being fought
25 right now in Michigan, using the same - and by inland,

1 when you look at the map and you see the designated
2 areas there's 20-million acres of land under the 1836
3 Treaty.

4 Q. How many tribes.

5 A. The three tribes again, the three
6 federally recognized tribes right now will be the ones
7 that will initiate that negotiation.

8 Q. Any major cities?

9 A. Yes, Sault Ste. Marie, Manistee,
10 Grand Traverse, Mackinaw Straits -- Straits of
11 Mackinaw. Those will all --

12 Q. To a larger extent what we are
13 looking at is Lake Nipigon acute?

14 A. Yeah.

15 Q. Okay. Now, getting back to where you
16 were, I'm sorry to interrupt you, but I wanted to get
17 to that point and get back to see how this works.

18 You have this broken up into places where
19 there can be no commercial fishing, commercial fishing
20 is regulated and so on?

21 A. Right. The agreement had also
22 created a situation which brought the enforcement
23 agencies closer together, the tribal enforcement
24 agencies.

25 Q. I understand that there's seven

1 wardens in each tribe now; is that correct?

2 A. Yes, they have seven designated
3 wardens each.

4 Q. And they have their own boats?

5 A. Yes.

6 Q. And have they made any major arrests.

7 A. Fair question.

8 Q. Fair play. That was the
9 international incident about a year and a half ago
10 where a Canadian fisherman was fishing in U.S. waters;
11 is that correct?

12 A. U.S. tribal waters.

13 Q. U.S. tribal waters was stopped by a
14 tribal warden; is that correct?

15 A. Yes.

16 Q. Please continue.

17 A. The agreement -- first of all, when I
18 was in my capacity as personnel manager, I had hired
19 the first conservation officers.

20 Q. What was that like?

21 A. In that time all we had was two
22 pieces of paper that had some basic outlines of
23 tribal -- what we considered to be tribal conservation
24 codes and we gave the officers that and a badge.

25 Q. That was it?

1 A. That was it. There was no uniforms
2 or cars, we had nothing like that at the time.

3 Q. Or guns.

4 A. Or guns. Where today it's much more
5 sophisticated. We do have a lot of equipment. The
6 uniforms -- their training, they were trained by fish
7 and wildlife service and they do have a cooperation
8 agreement between them, between the tribal conservation
9 officers, the U.S. coast guard and U.S. Fish and
10 Wildlife so they do work close together that way.

11 They do have a tribal court system, a
12 conservation court. If a member of the tribe is caught
13 in violation, if the biologist say that these waters
14 are not to be fished and a tribal member goes and
15 fishes in those waters, then he's subpoenaed and charged
16 and it will go to a tribal court.

17 Q. What about a non-tribal member?

18 A. Non-tribal member, non-tribal member
19 would be held for state prosecution.

20 Q. Through the DNR?

21 A. Through the DNR. Which we had -- we
22 had a conference, an international conference on Indian
23 fishing rights. One of the Chiefs from Ontario asked
24 one of the conservation officers, have you ever put
25 anybody out of business.

1 Q. What was the response?

2 A. The response by the game warden or
3 the conservation officer, tribal conservation officer
4 was that they weren't in the business of putting people
5 out of business, however, if they violated a law and
6 were fined or if they violated a law and lost their
7 equipment and continued to practice, then they were
8 putting themselves out of business.

9 Q. In other words, it wasn't the tribe
10 that was putting the people out of business, it was the
11 people putting themselves out of business by not
12 obeying these regulations?

13 A. Right.

14 Q. Now, did the Canadian chiefs have a
15 hard time with that?

16 A. Yes, they did.

17 Q. In what way?

18 A. Again, being a former chief myself
19 and I served on council for about six years, one of the
20 things that happened just before we had the fish
21 conference, the week before we had the fish conference
22 the Sparrow decision, which recognized aboriginal
23 rights in British Columbia, and I guess there's still a
24 lot of interpretation to that, but the Sparrow decision
25 came out.

1 We had been talking to First Nations
2 about showing them the U.S. experience and a negotiated
3 settlement and the value of it. When the Sparrow came
4 out we felt that that might have blew that chance,
5 because why would people want to negotiate a settlement
6 if you don't have to, if your rights are -- you know,
7 if the courts define your rights. So that was a
8 problem that we seen.

9 Because the U.S. tribes sat down and
10 negotiated a settlement with the state, with the
11 federal, and had user groups there participating in
12 those discussions.

13 Q. But only after the court said that
14 they had the right?

15 A. Right.

16 Q. Yes. The negotiations followed the
17 court decision?

18 A. Yes.

19 Q. Please continue.

20 A. The conference, the fish conference
21 we had was again designed to bring together the tribes
22 from Wisconsin, Minnesota -- Minnesota, Wisconsin and
23 Michigan and the First Nations aboriginal groups from
24 Ontario mainly to sit down and look at where everything
25 is at.

1 But because of the Sparrow decision all
2 of a sudden people needed some kind of platform. So we
3 got people coming in from British Columbia and from
4 Nova Scotia as well heard we were having this
5 conference and wanted to hear something on the Sparrow
6 decision, what it was going to do.

7 We had invited representatives from both
8 state governments to participate on the panels in
9 discussions, as well we invited provincial
10 representatives which Mel Crystal --

11 Q. Mel Crystal is a negotiator with the
12 MNR?

13 A. Mel Crystal is with the Ontario -- I
14 don't know what his -- who he's with.

15 MADAM CHAIR: Mr. Crystal has been at
16 this hearing and given evidence and he's with the
17 Ministry of Natural Resources now.

18 MR. ELLIOTT: Yeah. And John Byron,
19 anyway, as well representatives from the AFN were there
20 as well and from the associations.

21 MR. IRWIN: Q. Now, I'm interested in
22 how this system works. In our submission we have -
23 have you got a copy of the submission? In the back,
24 you have the Chippewa Treaty Fishery Management
25 Authority rules and regulations, and my reading of it

1 and I'm certainly not an expert in this, they seem very
2 sophisticated covering such things as tribal zones,
3 tribal commercial only, state zones, state zone, tribal
4 commercial prohibited, lake trout refuges, transition
5 zones. What's a transition zone?

6 A. Out of all the questions you've got
7 to ask me that.

8 Q. It says, no commercial fishing. Can
9 you tell me -- here it only has primary lake trout
10 rehab zone, and just from that, this was sort of an
11 area that you rested, but I wasn't sure, to give it
12 some growth.

13 A. I think transition zones are mainly
14 for build-up purposes that, you know, that the activity
15 needs to be built up.

16 Q. Well, how is the quota decided and
17 how are the fishermen from the three tribes picked?
18 How does that occur?

19 A. Each tribe independently determines
20 who their fishermen are. The Sault Ste. Marie tribe of
21 Chippewa Indians, for example, say they have 10
22 commercial fishing licences and that's it, they drew
23 the line on 10.

24 Bay Mills Indian Community --

25 Q. They're traditional fishermen; aren't

1 they, Bay Mills?

2 A. Yes.

3 Q. What do they say?

4 A. They say that anyone who pays a \$5
5 fee can be a -- or \$25 fee or \$5 fee, can be a
6 registered fisherman.

7 Q. So they said no prohibitions on the
8 number of fishermen?

9 A. Right.

10 Q. Okay. What about Grand Traverse?

11 A. Grand Traverse has a certain amount
12 of designated commercial fishermen and they have a fish
13 for harvest or fish for sustenance.

14 Q. Now, so the individual tribes set the
15 number. Now, who sets the amount that can be fished?

16 A. The amount is determined by the
17 biological results of a specific area. The fishermen
18 are required to submit monthly reports on fish catches.
19 Based on those fish catches, they determine how much
20 fish are in there.

21 Q. You say they; is that the Chippewa
22 Ottawa Treaty Fishery Management Authority?

23 A. Right, through their fisheries
24 assessment program. When the relationship between the
25 State and the Chippewa Ottawa Treaty Fishery - COTFA we

1 call it - their relationship is that they have to
2 produce an annual report together in the fish catches
3 of that area.

4 Q. That is the State and the Authority
5 have to do that?

6 A. Yeah.

7 Q. Are they managing to do that?

8 A. Yeah. It's not often easy, but they
9 get through it.

10 Q. So you're at the report stage.

11 A. Yes.

12 Q. Does that lead to the quotas?

13 A. Pretty well. That is where they
14 begin to look at how healthy an area is, they do
15 scaling and all the other kind of things.

16 Q. I take it through this process, the
17 State/Authority process, resulting in the number of
18 fish that can be taken, this is published or some sort
19 of rule and regulation similar to what we have here.

20 A. Yes.

21 Q. And the tribes themselves decide how
22 many people will be allocated to the quota?

23 A. Yes.

24 Q. Okay. Does that work?

25 A. Pretty well, yeah.

1 Q. What are the shortcomings?

2 A. Well, fishermen don't like to be told
3 that you can't fish in the lake, then it does cause
4 those kind of problems. But eventually, I mean, they
5 have no recourse but to go by the rules that have been
6 set out, their rules.

7 Q. Now, what about fishing gear. I see
8 in these regulations gear is also regulated. How is
9 that done?

10 A. By conservation, the conservation
11 officers, every registered fisherman has to register
12 the type of gear, they are issued a licence, they
13 register the type of gear, who will be fishing with
14 them, but the Indians --

15 Q. Excuse me. Is that developed between
16 the Authority and the State DNR officials, or
17 rightfully who, the Authority singly?

18 A. Those are rules that are developed by
19 the tribes and the organization, the Chippewa Ottawa
20 organization.

21 Q. The DNR has no input into this as to
22 gear?

23 A. They make recommendations. They sit
24 down and talk. And the type of gear, again, the State
25 wanted to do away with the gill net fishing.

1 Q. Yes.

2 A. And as a result of the regulations,
3 the tribes still fish with gill nets but they're within
4 their waters so they're not violating, they're not
5 going out and violating somebody else's waters. So
6 those are defined.

7 Q. There are some areas they can use
8 gill nets and some areas they can't?

9 A. Yes.

10 Q. This is in this regulation?

11 A. Yeah.

12 Q. Okay. You have a Native warden, he
13 charges a Native, he comes before this court, this
14 Tribal court. Where does that Tribal court sit?

15 A. The Tribal court is located at the
16 Bay Mills Indian Community at the tribal centre.

17 Q. How does the system work, similar to
18 a non-native court?

19 A. Similar to -- yeah.

20 Q. Is the prosecutor Native?

21 A. It depends on who they get to work
22 the court.

23 Q. So they have native and non-native.
24 prosecutors?

25 A. They have Native and non-native

1 prosecutors.

2 Q. I gather the wardens are generally
3 Native?

4 A. For the most part.

5 Q. What about the scientific support
6 staff, what is the agenda of the management authority
7 as far as hiring and developing and what exists now?

8 A. The biologists are currently
9 non-Indian but they do train, through a number of
10 training programs, people how to read scales and they
11 have in-house training for tribal members.

12 Q. Okay. There would be in-house
13 training of tribal members?

14 A. Yeah.

15 Q. Now, you've put up a sketch. On your
16 sketch the first thing that comes to mind is, why does
17 the tribal area go so far out into the Great Lakes; how
18 was that developed?

19 A. If I could just finish this off.

20 Q. Oh, sure. Fine, I'm so sorry.

21 A. There was talk about conservation,
22 enforcement and enhancement. Enhancement is, the
23 tribes under this agreement have set up a number of
24 hatcheries and are now putting a lot of fish back into
25 system, Nunn's Creek. There's mention of some of the

1 areas now that are looking for new inlets to develop,
2 but that was part of it, that was the enhancement, and
3 that was a very crucial part of the negotiations
4 because when people talked about an area they talk
5 about it like farming, you know, you cultivate it, you
6 grow it, you reap the benefits.

7 And Indian people were being accused of
8 reaping the benefits without sowing the oats, so
9 enhancement became a very important part of that, to
10 participate in putting back fish into the system.

11 Q. How broad is the enhancement for the
12 fingerling process?

13 A. I know of two operations, Nunn's
14 Creek, that I'm more familiar with, and they do walleye
15 and some of those species.

16 Q. Both done by the tribal groupings?

17 A. Yes. And because of the agreement,
18 this agreement, the tribe or the Chippewa Ottawa Fish
19 Management Authority sits on the International Fishing
20 Commission, Fisheries Commission with Michigan and
21 Ontario or Canada.

22 So that was the enhancement part of it,
23 participating in that Great Lakes, okay.

24 Q. Now, my question was: Why does the
25 area go so far out into the Great Lakes, that is the

1 first thing you notice.

2 A. In the initial discussions of
3 boundaries, they had to look at, in the northern part
4 the boundaries were used as the international
5 boundaries, the U.S./Canada boundaries were used to
6 determine some of that.

7 The inland boundaries were used as part
8 of -- these were the original Treaty areas. And then
9 from here going down into Lake Michigan it was, I
10 think, half of the lake, halfway out because there
11 might be some other interest group, some other tribal
12 interest group on the other side that might be laying
13 claim to those waters as well.

14 Q. You're a chief of the Cape Croker
15 Reserve in here, that would be right here on the
16 peninsula somewhere.

17 A. Yes.

18 Q. How would that work on the Canadian
19 side with yourself and the Manitoulin tribes, I mean,
20 I'm speculating in the future, but what would happen
21 there?

22 A. Well, the Ministry claims that our
23 fishing waters are like there.

24 Q. I can't see it.

25 A. Well, right around Cape Croker.

1 Q. Okay.

2 A. That those are our fishing waters.

3 Our claim, we have two treaties and one goes by
4 Collingwood, goes by Collingwood down to Arthur, up
5 to -- I can't think of that city there.

6 Q. Southhampton?

7 A. No, it's further down there. One of
8 the major cities down there. So that's our original
9 Treaty or claim that we're under right now.

10 MR. MARTEL: Is that Owen Sound?

11 THE WITNESS: No, Owen Sound is right
12 here. That's -- I don't know how many times I've said
13 it.

14 MR. AIKEN: Arthur, there's a map just
15 behind you there.

16 THE WITNESS: Oh.

17 MR. FREIDIN: It doesn't go down that
18 far.

19 THE WITNESS: But I know what that --

20 MR. IRWIN: Q. Well, that's okay. It's
21 in there somewhere.

22 A. Anyway, we would look at it that that
23 then would have to go out to the border, come up the
24 border to wherever the province and Huron, I think it's
25 down by Parry Sound somewhere, around Camp Robinson

1 Huron Treaty, and it would go something like that, and
2 then this way north because we know that there's other
3 interests there. So then we would be in the middle of
4 that area.

5 Q. What about Manitoulin and the Ojibway
6 groupings in there?

7 A. The Manitoulin -- the Robinson
8 Superior Treaty then, I would assume, would look like
9 like that, and then we're really -- the Robinson
10 Superior Treaty, if they were discussing fishing, then
11 I would assume it would go similar to that, out into
12 the --

13 Q. And within this area you might have
14 that checkerboard effect that has been developed on the
15 Michigan side?

16 A. Right.

17 Q. They tie-in together?

18 A. Yeah, they would tie -- they all tie
19 in together.

20 MR. FREIDIN: Madam Chair, I don't know
21 to what extent this particular document might be
22 referred to later, but it makes some sense for the
23 transcript, it may be useful for Mr. Elliott to just
24 identify by number, like, say this area which I put
25 number 1 in is the area I refer to as the Robinson

1 Huron, the area I put No. 2 in is the area I refer to
2 as being something else, otherwise it won't be
3 explained in the transcript at all.

4 MR. IRWIN: Do you want that as an
5 exhibit? I wasn't going to put it as an exhibit, it
6 was only as an aid to the oral evidence, but...

7 MR. FREIDIN: I'm not sure how
8 understandable the oral evidence will be six months
9 from now if we don't have the document.

10 MADAM CHAIR: All right. Let's make this
11 hand-drawn map Exhibit 2162, and what are we going to
12 call it, Mr. Elliott?

13 Do you want to call it the boundaries of
14 the Chippewa Ottawa Treaty Fishery Management
15 Agreement.

16 THE WITNESS: Yes, that's this one here,
17 yeah.

18 MADAM CHAIR: That is in the blue
19 hatched--

20 THE WITNESS: Blue.

21 MADAM CHAIR: --part of the diagram and
22 the three red areas, the one with the No. 1 in it is
23 which area?

24 THE WITNESS: Is the Saugeen, Saugeen
25 territory map.

1 MADAM CHAIR: All right. And No. 2 we'll
2 mark --

3 MR. FREIDIN: Those are areas which have
4 been claimed as Saugeen areas?

5 THE WITNESS: Pardon.

6 MR. FREIDIN: These are claimed areas?

7 THE WITNESS: Yes. This is the Saugeen
8 territory. There's a joint council between Saugeen and
9 Cape Croker.

10 No. 2 would be the Robinson Huron and No.
11 3, I guess, would be Robinson Superior.

12 MADAM CHAIR: Mr. Elliott, could you put
13 Exhibit 2162 in the corner. Thank you.

14 ---EXHIBIT NO. 2162: Hand-drawn map depicting
15 boundaries of the Chippewa Ottawa
16 Treaty Fishery Management
17 Agreement.

17 MR. FREIDIN: While he's doing that,
18 Madam Chair, you should be aware that I was amazed to
19 watch Mr. Elliott - he didn't really take a lunch
20 hour - he did that by hand without a map in front of
21 him in about three or four minutes.

22 MADAM CHAIR: Very impressive, Mr.
23 Elliott.

24 MR. FREIDIN: Best piece of handwork I've
25 seen.

1 MADAM CHAIR: At this hearing certainly,
2 Mr. Freidin.

3 MR. IRWIN: The cheapest.

4 Thank you, Mr. Elliott.

5 MADAM CHAIR: Are you finished your
6 examination, Mr. Irwin?

7 Mr. Cassidy will not have any questions.

8 Ms. Seaborn,

9 MS. SEABORN: No questions, thank you,
10 Madam Chair.

11 MADAM CHAIR: Mr. Freidin?

12 MR. FREIDIN: If I can just have one
13 moment, please.

14 MADAM CHAIR: Yes.

15 MR. FREIDIN: I do have a question.

16 MADAM CHAIR: Yes.

17 CROSS-EXAMINATION BY MR. FREIDIN:

18 Q. Mr. Elliott, I'm looking at Exhibit
19 2161 which is the Chippewa Ottawa Treaty Fishery
20 document?

21 A. Yes.

22 Q. And would you just turn to page 4 for
23 a moment.

24 A. Yes.

25 Q. It's there that you described the

1 long history of the LeBlanc case which began in 1971.

2 A. Right.

3 Q. And what was the period of time that
4 it took for this particular, this single issue
5 regarding fishing rights to be resolved, 1971 until
6 when?

7 A. I believe it was '79 was when the --
8 '76 or '79.

9 Q. I see here on page 4 on the righthand
10 column it refers to the, the last paragraph:

11 "In 1980 the Michigan Court of Appeals
12 upheld the State's right to ban large
13 mesh gill nets."

14 It goes down further and refers to the
15 United States Court of Appeal in Cincinnati hearing
16 part of that?

17 A. Mm-hmm.

18 Q. It then talks about:

19 "The case then proceeded to the United
20 States Supreme Court which agreed with
21 the decision by denying to review."

22 Do you know when the United States
23 Supreme Court made that decision? It must have been
24 some time after 1980?

25 A. Yeah, it was '81.

1 Q. Okay.

2 A. '81, 1981.

3 Q. Now, in the United States, am I
4 correct, that you weren't able to rely on findings of
5 the court regarding fishing rights, say, in New Mexico
6 or New York State or Pennsylvania, you had to establish
7 that for this particular area in question?

8 A. Yeah.

9 MR. FREIDIN: Those are my questions.
10 Thank you.

11 MADAM CHAIR: Thank you, Mr. Freidin.
12 Thank you very much, Mr. Elliott.

13 Mr. Irwin, we are finished for today with
14 your three witnesses and we will be back at nine
15 o'clock tomorrow morning.

16 MR. IRWIN: Fine.

17 MADAM CHAIR: And we will be hearing from
18 Mr. MacGuire and Mr. King, and you're expecting three
19 other--

20 MR. IRWIN: Two and possibly three.

21 MADAM CHAIR: To join us tomorrow
22 morning?

23 MR. IRWIN: They are all named witnesses
24 but one may not be here.

25 MADAM CHAIR: All right, thank you. And

1 we thank very much Mr. Aiken and Mr. Dolcetti, again,
2 Mr. Elliott.

3 MS. SEABORN: Madam Chair, Mr. Irwin, do
4 you anticipate then completing your evidence tomorrow?

5 MR. IRWIN: Yes.

6 MS. SEABORN: Thank you.

7 MADAM CHAIR: Thank you. And there's
8 one matter, we had a piece of correspondence that has
9 nothing to do with your case, Mr. Irwin.

10 It was a letter, and we've been requested
11 to make this an exhibit, from the Ontario Federation of
12 Snowmobile Clubs. And I think we will do that now
13 before we conclude for the day. This will become
14 Exhibit 2163.

15 MR. FREIDIN: Just name it the Aiken
16 legacy.

17 MADAM CHAIR: Exhibit 2163 consists of a
18 covering note from Mr. Pascoe and a letter from Mr.
19 Ross Edmonstone who is identified as the general
20 manager of the Ontario Federation of Snowmobile Clubs.

21 Apparently Mr. Edmonstone wrote a letter
22 in support of the Ontario Federation of Anglers &
23 Hunters and the Northern Ontario Tourist Outfitters
24 case which reached them after they had finished
25 presenting their evidence to the Board and he is asking

1 that the Board consider his written submission, and he
2 states that this is on behalf of his organization which
3 represents 278 clubs in Ontario.

4 ---EXHIBIT NO. 2163: Letter from Ross Edmonstone,
5 general manager, Ontario
Federation of Snowmobile Clubs.

6 MADAM CHAIR: Thank you very much.

7 We'll see you tomorrow morning.

8
9 ---Whereupon the hearing was adjourned at 3:45 p.m., to
be reconvened on Tuesday, March 31st, 1992,
commencing at 9:00 a.m.

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25 BD [C. copyright 1985].



